

LOAN TRANSACTIONS AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill creates the Pawnshop Transaction Information Act within the Department of Commerce. The bill establishes record keeping and reporting requirements for pawnbrokers and obligations of law enforcement agencies. This bill requires the creation of a statewide central database. This bill amends the Criminal Code regarding pawnbrokers. This bill also amends the Government Records Access and Management Act regarding reports pawnbrokers are required to provide to law enforcement agencies.

Highlighted Provisions:

This bill:

- ▶ creates transaction reporting requirements for pawnbroker businesses to report to law enforcement agencies;
- ▶ requires that pawnbroker reporting be conducted electronically and provides exceptions for small pawnbroker businesses and for situations when there is a malfunction;
- ▶ establishes a deadline for pawnbrokers to be reporting electronically and imposes a daily civil penalty for failure to comply;
- ▶ requires that a central statewide database be established for reported transactions;
- ▶ specifies the information and identification, including a fingerprint, that a pawnbroker must require in conducting a transaction;
- ▶ requires that pawnbrokers keep registers of transactions;
- ▶ requires that theft victims and pawnbrokers cooperate with law enforcement investigations in order to recover stolen property;
- ▶ requires that the pawnbroker be given time to comply with upgrades to the central

database;

- ▶ specifies the holding period for pawned articles and provides extensions for articles held for law enforcement investigations;
- ▶ imposes annual fees on pawnshops and participating law enforcement officers;
- ▶ requires that pawnbrokers and law enforcement officers participate in annual training;
- ▶ provides that violations of specified sections of the chapter are class C misdemeanors;
- ▶ provides that this chapter preempts any local government ordinances regarding pawnshop businesses if the ordinances are more restrictive than or not consistent with this chapter;
- ▶ provides that records provided to a law enforcement agency in compliance with this chapter are protected records under the Government Records Access and Management Act;
- ▶ creates a Pawnshop Advisory Board within the Department of Commerce;
- ▶ establishes a restricted account for civil penalties and fees imposed under this chapter and specifies uses of funds in the account, which includes training and the costs of the central database;
- ▶ amends the Criminal Code regarding the offense of receiving stolen property to exempt dealers in property who receive it for less than reasonable value from the presumption regarding possession of stolen property; and
- ▶ amends the Criminal Code to delete the value limitation regarding pawnbrokers' obligations to obtain information from individuals selling or delivering property to them.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

This bill provides a repeal date.

Utah Code Sections Affected:

AMENDS:

63-2-304, as last amended by Chapters 60 and 131, Laws of Utah 2003

76-6-408, as last amended by Chapter 102, Laws of Utah 1993

ENACTS:

13-32a-101, Utah Code Annotated 1953

13-32a-102, Utah Code Annotated 1953

13-32a-103, Utah Code Annotated 1953

13-32a-104, Utah Code Annotated 1953

13-32a-105, Utah Code Annotated 1953

13-32a-106, Utah Code Annotated 1953

13-32a-107, Utah Code Annotated 1953

13-32a-108, Utah Code Annotated 1953

13-32a-109, Utah Code Annotated 1953

13-32a-110, Utah Code Annotated 1953

13-32a-111, Utah Code Annotated 1953

13-32a-112, Utah Code Annotated 1953

13-32a-113, Utah Code Annotated 1953

13-32a-114, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-32a-101** is enacted to read:

CHAPTER 32a. PAWNSHOP TRANSACTION INFORMATION ACT

13-32a-101. Title.

This chapter is known as the "Pawnshop Transaction Information Act."

Section 2. Section **13-32a-102** is enacted to read:

13-32a-102. Definitions.

As used in this chapter:

(1) "Account" means the Pawnbroker Operations Restricted Account created in Section

13-32a-113.

(2) "Board" means the Pawnshop Advisory Board created by this chapter.

(3) "Central database" or "database" means the electronic database created and operated under Section 13-32a-105.

(4) "Identification" means a form of positive identification issued by a governmental entity that:

(a) contains a numerical identifier and a photograph of the person identified; and

(b) may include a state identification card, a state drivers license, a United States military identification card, or a United States passport.

(5) "Local law enforcement agency" means a law enforcement agency that has jurisdiction over the location where the pawnshop is located.

(6) "Misappropriated" means stolen, embezzled, converted, obtained by theft, or otherwise appropriated without authority of the lawful owner.

(7) "Original victim" means a victim who is not a party to the pawn transaction.

(8) "Pawnbroker" means a person whose business engages in the following activities:

(a) loans money on one or more deposits of personal property;

(b) deals in the purchase, exchange, or possession of personal property on condition of selling the same property back again to the pledgor or depositor;

(c) loans or advances money on personal property by taking chattel mortgage security on the property and takes or receives the personal property into his possession, and who sells the unredeemed pledges; or

(d) engages in a licensed business enterprise as a pawnshop.

(9) "Pawn ticket" means a document upon which information regarding a pawn transaction is entered when the pawn transaction is made.

(10) "Pawn transaction" means an extension of credit in which an individual delivers property to a pawnbroker for an advance of money or sells property to a pawnbroker and retains the right to redeem or repurchase the property for the redemption price within a fixed period of time.

(11) "Pawnshop" means the physical location or premises where a pawnbroker conducts business.

(12) "Property" means any tangible personal property.

(13) "Register" means the record of information required under this chapter to be maintained by the pawnbroker. The register is an electronic record that is in a format that is compatible with the central database.

Section 3. Section **13-32a-103** is enacted to read:

13-32a-103. Compliance with criminal code.

Every pawnbroker shall, regarding each article of property a person pawns or sells, comply with the requirements of Subsections 76-6-408(2)(c)(i) through (iii) regarding the person's:

- (1) legal right to the property;
- (2) fingerprint; and
- (3) picture identification.

Section 4. Section **13-32a-104** is enacted to read:

13-32a-104. Register required to be maintained -- Contents -- Identification of items.

(1) Every pawnbroker shall keep a register of pawn transactions, in which the pawnbroker or his employee shall enter the following information regarding every article pawned to him:

- (a) the date and time of the transaction;
- (b) the pawn transaction ticket number;
- (c) the date by which the article must be redeemed;
- (d) the following information regarding the person who pawns the article:
 - (i) the person's name, residence address, and date of birth;
 - (ii) the number of the driver license or other form of positive identification presented by the person, and notations of discrepancies if the person's physical description, including gender, height, weight, race, age, hair color, and eye color, does not correspond with identification

provided by the person;

(iii) the person's signature; and

(iv) a legible fingerprint of the person's right thumb, or if the right thumb cannot be fingerprinted, a legible fingerprint of the person with a written notation identifying the fingerprint and the reason why the thumb print was unavailable;

(e) the amount loaned on or paid for the article, or the article for which it was traded;

(f) the identification of the pawnbroker or his employee, whoever is making the register entry; and

(g) an accurate description of the article of property, including available identifying marks such as:

(i) names, brand names, numbers, serial numbers, model numbers, color, manufacturers' names, and size;

(ii) metallic composition, and any jewels, stones, or glass;

(iii) any other marks of identification or indicia of ownership on the article;

(iv) the weight of the article, if the payment is based on weight;

(v) any other unique identifying feature;

(vi) gold content, if indicated; and

(vii) if multiple articles of a similar nature are delivered together in one transaction and the articles do not bear serial or model numbers and do not include precious metals or gemstones, such as musical or video recordings, books, or hand tools, the description of the articles is adequate if it includes the quantity of the articles and a description of the type of articles delivered.

(2) A pawnshop may not accept any personal property if, upon inspection, it is apparent that serial numbers, model names, or identifying characteristics have been intentionally defaced on that article of property.

Section 5. Section **13-32a-105** is enacted to read:

13-32a-105. Central database.

(1) There is created under this section a central database as a statewide repository for all

information pawnbrokers are required to submit in accordance with this chapter and for the use of all participating law enforcement agencies whose jurisdictions include one or more pawnshops.

(2) The Division of Purchasing and General Services created in Title 63A, Chapter 2, shall:

(a) meet with the board to determine the required elements of the database; and

(b) conduct a statewide request for proposal for the creation of and maintenance of the central database.

(3) Funding for the creation and operation of the central database shall be from the account.

(4) (a) Any entity submitting a bid to create, maintain, and operate the database pursuant to the request for proposal conducted by the Division of Purchasing and General Services may not hold any financial or operating interest in any pawnshop in any state.

(b) The Division of Purchasing and General Services, in conjunction with the Pawnshop Advisory Board, shall verify before a bid is awarded that the selected entity meets the requirements of Subsection (4)(a).

(c) If any entity is awarded a bid under this Subsection (4) and is later found to hold any interest in violation of Subsection (4)(a), the award is subject to being opened again for request for proposal.

(5) Information entered in the database shall be retained for five years and shall then be deleted.

Section 6. Section **13-32a-106** is enacted to read:

13-32a-106. Transaction information provided to the central database -- Protected information.

(1) The information required to be recorded under Sections 13-32a-103 and 13-32a-104 that is capable of being transmitted electronically shall be transmitted electronically to the central database on the next business day following the transaction.

(2) The pawnbroker shall maintain all pawn tickets generated by the pawnshop and shall maintain the tickets in a manner so that the tickets are available to local law enforcement agencies

as required by this chapter and as requested by any law enforcement agency as part of an investigation or reasonable random inspection conducted pursuant to this chapter.

(3) (a) If a pawnshop experiences a computer or electronic malfunction that affects its ability to report transactions as required in Subsection (1), the pawnshop shall immediately notify the local law enforcement agency of the malfunction.

(b) The pawnshop shall solve the malfunction within three business days or notify law enforcement under Subsection (4).

(4) If the computer or electronic malfunction under Subsection (3) cannot be solved within three business days, the pawnshop shall notify the local law enforcement agency of the reasons for the delay and provide documentation from a reputable computer maintenance company of the reasons why the computer or electronic malfunction cannot be solved within three business days.

(5) A computer or electronic malfunction does not suspend the pawnshop's obligation to comply with all other provisions of this chapter.

(6) During the malfunction under Subsections (3) and (4), the pawnshop shall:

(a) maintain the pawn tickets and other information required under this chapter in a written form; and

(b) arrange with the local law enforcement agency a mutually acceptable alternative method by which the pawnshop provides the required information to the local law enforcement official.

(7) Any pawnshop is subject to a civil penalty of \$50 per day if:

(a) the pawnshop is unable to submit the information electronically due to a computer or electronic malfunction;

(b) the three business day period under Subsection (3) has expired; and

(c) the pawnshop has not provided documentation regarding its inability to solve the malfunction as required under Subsection (4).

(8) All civil penalty payments under Subsection (7) shall be remitted to the Department of Commerce, which shall deposit the fees in the account.

(9) A pawnshop is not responsible for a delay in transmission of information that results from a malfunction in the central database.

Section 7. Section **13-32a-107** is enacted to read:

13-32a-107. Deadline for registers to be electronic -- Notice for updating.

(1) On and after January 1, 2005, each pawnbroker in the state that generates ten or more pawn transactions per month shall maintain the register in an electronic format that is compatible with the central database computer system.

(2) On and after January 15, 2005, pawnbrokers under Subsection (1) shall pay a civil penalty of \$50 a day to the Department of Commerce for each daily report required under Section 13-32a-106 that is submitted as a written report rather than electronically.

(3) The operators of the central database shall establish written procedures in conjunction with the Pawnshop Advisory Board to ensure that when the central database is upgraded, the affected pawnbrokers will receive adequate notice, information, and time to upgrade their computer systems so the systems are compatible with the upgraded central database.

Section 8. Section **13-32a-108** is enacted to read:

13-32a-108. Retention of records -- Reasonable inspection.

(1) The pawnbroker or law enforcement agency, whichever has custody of pawn tickets, shall retain them for no less than three years from the date of the transaction.

(2) (a) A law enforcement agency may conduct random reasonable inspections of pawnshops for the purpose of monitoring compliance with the reporting requirements of this chapter. The inspections may be conducted to:

(i) confirm that pawned items match the description reported to the database by the pawnshop; and

(ii) make spot checks of property at the pawnshop to determine if the property is appropriately reported.

(b) Inspections under Subsection (2)(a) shall be performed during the regular business hours of the pawnshop.

Section 9. Section **13-32a-109** is enacted to read:

13-32a-109. Holding period for pawned articles.

(1) (a) The pawnbroker shall hold all articles pawned or sold to him for not fewer than 30 days after the date of receipt of the article, except that the pawnbroker may within this time period return an article to the person who pawned it.

(b) This Subsection (1) does not preclude a law enforcement agency from requiring a pawnbroker to hold an article longer than 30 days if necessary in the course of an investigation.

(2) If a law enforcement agency seizes an article or requires the pawnbroker to hold an article as part of an investigation, the agency shall provide to the pawnbroker a hold ticket issued by the agency, which:

(a) states the active case number;

(b) confirms the date of the hold request and the article to be held; and

(c) facilitates the pawnbroker's ability to track the article when the prosecution takes over the case.

(3) If an article is not seized by a law enforcement agency that has placed a hold on the property, the property may remain in the custody of the pawnbroker until further disposition by the law enforcement agency, and as consistent with this chapter.

(4) The initial hold by a law enforcement agency is for a period of 45 days. If the article is not seized by the law enforcement agency, the article shall remain in the custody of the pawnshop and is subject to the hold unless exigent circumstances require the pawned article to be seized by the law enforcement agency.

(5) (a) A law enforcement agency may extend any hold for up to an additional 45 days when exigent circumstances require the extension.

(b) When there is an extension of a hold under Subsection (5)(a), the requesting law enforcement agency shall notify the pawnshop subject to the hold prior to the expiration of the initial 45 days.

(c) A law enforcement agency may not hold an item for more than the 90 days allowed under Subsections (5)(a) and (b) without obtaining a court order authorizing the hold.

(6) A hold on an article under Subsection (2) takes precedence over any request to claim

or purchase the article subject to the hold.

(7) When the purpose for the hold on or seizure of an article is terminated, the law enforcement agency requiring the hold or seizure shall within 15 days after the termination:

(a) notify the pawnshop in writing that the hold or seizure has been terminated;

(b) return the article subject to the seizure to the pawnbroker; or

(c) if the article is not returned to the pawnbroker, advise the pawnbroker either in writing or electronically of the specific alternative disposition of the article.

(8) If the article is subject to an investigation and a criminal prosecution results, the prosecuting agency shall, upon disposition of the case, request restitution to the pawnbroker for the crimes perpetrated against the pawnshop as a victim of theft by deception in addition to the request for restitution to the original victim.

(9) If the original victim of the theft of the property files a police report and the property is subsequently located at a pawnshop, the victim must fully cooperate with the prosecution of the crimes perpetrated against the pawnshop as a victim of theft by deception, in order to qualify for restitution regarding the property.

(10) If the victim does not wish to pursue criminal charges or does not cooperate in the prosecution of the property theft against the defendant and the theft by deception committed against the pawnshop, then the original victim must pay to the pawnshop the amount of money financed by the pawnshop to the defendant in order to obtain the property.

(11) (a) The victim's cooperation in the prosecution of the property crimes and in the prosecution of the theft by deception offense committed against the pawnshop suspends the requirements of Subsections (9) and (10).

(b) If the victim cooperates in the prosecution under Subsection (11)(a) and the defendants are convicted, the prosecuting agency shall direct the pawnshop to turn over the property to the victim.

(c) Upon receipt of notice from the prosecuting agency that the property must be turned over to the victim, the pawnshop shall return the property to the victim as soon as reasonably possible.

(12) A pawnshop must fully cooperate in the prosecution of the property crimes committed against the original victim and the property crime of theft by deception committed against the pawnshop in order to participate in any court-ordered restitution.

(13) At all times during the course of a criminal investigation and subsequent prosecution, the article subject to a law enforcement hold shall be kept secure by the pawnshop subject to the hold unless the pawned article has been seized by the law enforcement agency.

Section 10. Section **13-32a-110** is enacted to read:

13-32a-110. Penalties.

(1) A violation of any of the following sections is a class C misdemeanor:

(a) Section 13-32a-103, compliance with criminal code;

(b) Section 13-32a-104, register required to be maintained;

(c) Section 13-32a-106, transaction information provided to law enforcement;

(d) Section 13-32a-108, retention of records; or

(e) Section 13-32a-109, holding period for pawned articles.

(2) This section does not prohibit civil action by a governmental entity regarding the pawnbroker's business operation or licenses.

Section 11. Section **13-32a-111** is enacted to read:

13-32a-111. Fees to fund training and central database.

(1) On and after January 1, 2005, each pawnshop in operation shall annually pay \$250 to the Department of Commerce, to be deposited in the account.

(2) On and after January 1, 2005, each law enforcement agency that participates in the use of the database shall annually pay to the Department of Commerce a fee of \$2 per sworn law enforcement officer who is employed by the agency as of January 1 of that year. The fee shall be deposited in the account.

(3) The fees under Subsections (1) and (2) shall be paid to the account annually on or before January 30.

Section 12. Section **13-32a-112** is enacted to read:

13-32a-112. Pawnshop Advisory Board -- Membership -- Duties -- Provide training

-- Records of compliance.

(1) There is created within the Department of Commerce the Pawnshop Advisory Board.

The board consists of ten voting members and one nonvoting member:

(a) one representative of the Utah Chiefs of Police Association;

(b) one representative of the Utah Sheriffs Association;

(c) one representative of the Statewide Association of Prosecutors;

(d) five representatives from the pawnshop industry who are appointed by the director of the Utah Commission on Criminal and Juvenile Justice (CCJJ) and who represent five separate pawnshops, each owned by a separate person or entity;

(e) one law enforcement officer who is appointed by the board members under Subsections (1)(a) through (d);

(f) one law enforcement officer whose work regularly involves pawnshops and who is appointed by the board members under Subsections (1)(a) through (d); and

(g) one representative from the central database, who is nonvoting.

(2) (a) The board shall elect one voting member as the chair of the board by a majority of the members present at the board's first meeting each year.

(b) The chair shall preside over the board for a period of one year.

(c) The advisory board shall meet quarterly upon the call of the chair.

(3) (a) The board shall conduct quarterly training sessions regarding compliance with this chapter and other applicable state laws for any person defined as a pawnbroker in this chapter.

(b) Each training session shall provide not fewer than two hours of training.

(4) (a) Each pawnbroker in operation as of January 1 shall ensure one or more persons employed by the pawnshop each participate in no fewer than four hours of compliance training within that year.

(b) This requirement does not limit the number of employees, directors, or officers of a pawnshop who attend the compliance training.

(5) The board shall monitor and keep a record of the hours of compliance training accrued by each pawnshop.

(6) The board shall provide each pawnshop with a certificate of compliance upon completion by an employee of the four hours of compliance training.

(7) (a) Each law enforcement agency that has a pawnshop located within its jurisdiction shall ensure that at least one of its officers completes four hours of compliance training yearly.

(b) This requirement does not limit the number of law enforcement officers who attend the compliance training.

Section 13. Section **13-32a-113** is enacted to read:

13-32a-113. Pawnbroker Operations Restricted Account.

(1) There is created within the General Fund a restricted account known as the Pawnbroker Operations Restricted Account.

(2) (a) The account shall be funded from the fees and civil penalties imposed and collected under Sections 13-32a-106, 13-32a-107, and 13-32a-111. These fees and penalties shall be paid to the Department of Commerce, which shall deposit them in the account.

(b) The Legislature may appropriate the funds in this account:

(i) to the board for the costs of providing training required under this chapter, costs of the central database created in Section 13-32a-105, and for costs of operation of the board; and

(ii) to the Department of Commerce for management of fees and penalties paid under this chapter.

(c) The board shall account to the Department of Commerce for expenditures.

(d) The board shall account separately for expenditures for:

(i) training required under this chapter;

(ii) operation of the database;

(iii) operation of the board; and

(iv) costs of operation of the board.

Section 14. Section **13-32a-114** is enacted to read:

13-32a-114. Preemption of local ordinances -- Exceptions.

(1) This chapter preempts all city, county, and other local ordinances governing pawnshops, pawnbrokers, and pawnbroking transactions, if the ordinances are more restrictive

than the provisions of this chapter or are not consistent with this chapter.

(2) Subsection (1) does not preclude a city, county, or other local governmental unit from:

(a) enacting or enforcing local ordinances concerning public health, safety, or welfare, if the ordinances are uniform and equal in application to pawnshops and pawnbrokers and other similar businesses or activities;

(b) requiring a pawnshop or pawnbroker to obtain and maintain a business license; and

(c) enacting zoning ordinances that restrict areas where pawnshops and other similar businesses or activities can be located.

Section 15. Section **63-2-304** is amended to read:

63-2-304. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a

competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a

duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's

jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(19) personal files of a legislator, including personal correspondence to or from a member of the Legislature, provided that correspondence that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if

retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

(38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:

- (i) unpublished lecture notes;
- (ii) unpublished research notes and data;
- (iii) unpublished manuscripts;
- (iv) creative works in process;
- (v) scholarly correspondence; and
- (vi) confidential information contained in research proposals; and

(b) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

- (a) a production facility; or
- (b) a magazine;

(43) information contained in the database described in Section 62A-3-311.1;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services; ~~and~~

(45) information regarding National Guard operations or activities in support of the

National Guard's federal mission[-]; and

(46) records provided by any pawnbroker or pawnshop to a law enforcement agency in compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act.

Section 16. Section **76-6-408** is amended to read:

76-6-408. Receiving stolen property -- Duties of pawnbrokers.

(1) A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding the property from the owner, knowing the property to be stolen, intending to deprive the owner of it.

(2) The knowledge or belief required for Subsection (1) is presumed in the case of an actor who:

(a) is found in possession or control of other property stolen on a separate occasion;

(b) has received other stolen property within the year preceding the receiving offense charged; or

~~[(c) being a dealer in property of the sort received, retained, or disposed, acquires it for a consideration which he knows is far below its reasonable value; or]~~

~~[(d) if the value given for the property exceeds \$20;]~~

(c) is a pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or an agent, employee, or representative of a pawnbroker or person who buys, receives, or obtains property and fails to require the seller or person delivering the property to:

(i) certify, in writing, that he has the legal rights to sell the property;

(ii) provide a legible print, preferably the right thumb, at the bottom of the certificate next to his signature; and

(iii) provide at least one ~~[other]~~ positive form of ~~[picture]~~ identification.

(3) Every pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, and every agent, employee, or representative of a pawnbroker or person who fails to comply with the requirements of

Subsection (2)(c) ~~[(d) shall be]~~ is presumed to have bought, received, or obtained the property knowing it to have been stolen or unlawfully obtained. This presumption may be rebutted by proof.

(4) When, in a prosecution under this section, it appears from the evidence that the defendant was a pawnbroker or a person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or was an agent, employee, or representative of a pawnbroker or person, that the defendant bought, received, concealed, or withheld the property without obtaining the information required in Subsection (2)(d), then the burden shall be upon the defendant to show that the property bought, received, or obtained was not stolen.

(5) Subsections (2)~~(d)~~(c), (3), and (4) do not apply to scrap metal processors as defined in Section 76-10-901.

(6) As used in this section:

~~(b)~~ (a) "Dealer" means a person in the business of buying or selling goods.

(b) "Pawnbroker" means a person who:

(i) loans money on deposit of personal property, or deals in the purchase, exchange, or possession of personal property on condition of selling the same property back again to the pledge or depositor;

(ii) loans or advances money on personal property by taking chattel mortgage security on the property and takes or receives the personal property into his possession and who sells the unredeemed pledges; or

(iii) receives personal property in exchange for money or in trade for other personal property.

~~(a)~~ (c) "Receives" means acquiring possession, control, or title or lending on the security of the property[;].

Section 17. **Effective date.**

This bill takes effect on January 1, 2005, except that Section 13-32a-105 takes effect on December 1, 2004.

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Section 18. **Repeal date.**

This bill is repealed on May 2, 2005.