

**LOAN TRANSACTIONS AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

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**LONG TITLE****General Description:**

This bill creates the Pawnshop Transaction Information Act within the Department of Financial Institutions. 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



- 28 investigations in order to recover stolen property;
- 29       ▶ requires that the pawnbroker be given time to comply with upgrades to the central
- 30 database;
- 31       ▶ specifies the holding period for pawned articles and provides extensions for articles
- 32 held for law enforcement investigations;
- 33       ▶ imposes annual fees on pawnshops and participating law enforcement officers;
- 34       ▶ requires that pawnbrokers and law enforcement officers participate in annual
- 35 training;
- 36       ▶ provides that violations of specified sections of the chapter are class C
- 37 misdemeanors;
- 38       ▶ provides that this chapter preempts any local government ordinances regarding
- 39 pawnshop businesses if the ordinances are more restrictive than or not consistent
- 40 with this chapter;
- 41       ▶ provides that records provided to a law enforcement agency in compliance with this
- 42 chapter are protected records under the Government Records Access and
- 43 Management Act;
- 44       ▶ creates a Pawnshop Advisory Board within the Department of Financial Institutions;
- 45       ▶ establishes a restricted account for civil penalties and fees imposed under this
- 46 chapter and specifies uses of funds in the account, which includes training and the
- 47 costs of the central database;
- 48       ▶ amends the Criminal Code regarding the offense of receiving stolen property to
- 49 exempt dealers in property who receive it for less than reasonable value from the
- 50 presumption regarding possession of stolen property; and
- 51       ▶ amends the Criminal Code to delete the value limitation regarding pawnbrokers'
- 52 obligations to obtain information from individuals selling or delivering property to
- 53 them.

54 **Monies Appropriated in this Bill:**

55       None

56 **Other Special Clauses:**

57       This bill provides an effective date.

58 **Utah Code Sections Affected:**

59 AMENDS:

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

61 **76-6-408**, as last amended by Chapter 102, Laws of Utah 1993

62 ENACTS:

63 **13-32a-101**, Utah Code Annotated 1953

64 **13-32a-102**, Utah Code Annotated 1953

65 **13-32a-103**, Utah Code Annotated 1953

66 **13-32a-104**, Utah Code Annotated 1953

67 **13-32a-105**, Utah Code Annotated 1953

68 **13-32a-106**, Utah Code Annotated 1953

69 **13-32a-107**, Utah Code Annotated 1953

70 **13-32a-108**, Utah Code Annotated 1953

71 **13-32a-109**, Utah Code Annotated 1953

72 **13-32a-110**, Utah Code Annotated 1953

73 **13-32a-111**, Utah Code Annotated 1953

74 **13-32a-112**, Utah Code Annotated 1953

75 **13-32a-113**, Utah Code Annotated 1953

76 **13-32a-114**, Utah Code Annotated 1953

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

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

80 **CHAPTER 32a. PAWNSHOP TRANSACTION INFORMATION ACT**

81 **13-32a-101. Title.**

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

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

84 **13-32a-102. Definitions.**

85 As used in this chapter:

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

87 13-32a-113.

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

89 (3) "Central database" or "database" means the electronic database created and

90 operated under Section 13-32a-105.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

122 **13-32a-103. Compliance with criminal code.**

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

126 (1) legal right to the property;

127 (2) fingerprint; and

128 (3) picture identification.

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

130 **13-32a-104. Register required to be maintained -- Contents -- Identification of**  
131 **items.**

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

135 (a) the date and time of the transaction;

136 (b) the pawn transaction ticket number;

137 (c) the date by which the article must be redeemed;

138 (d) the following information regarding the person who pawns the article:

139 (i) the person's name, residence address, and date of birth;

140 (ii) the person's physical description, including gender, height, weight, race, age, hair  
141 color, and eye color, based on identification provided by the person;

142 (iii) the number of the driver license or other form of positive identification presented  
143 by the person;

144 (iv) the person's signature; and

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

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

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

151 (g) an accurate description of the article of property, including available identifying

152 marks such as:

153 (i) names, brand names, numbers, serial numbers, model numbers, color,

154 manufacturers' names, and size;

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

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

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

158 (v) any other unique identifying feature;

159 (vi) gold content, if indicated; and

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

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

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

169 **13-32a-105. Central database.**

170 (1) There is created under this section a central database as a statewide repository for  
171 all information pawnbrokers are required to submit in accordance with this chapter and for the  
172 use of all participating law enforcement agencies whose jurisdictions include one or more  
173 pawnshops.

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

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

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

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

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

182 **13-32a-106. Transaction information provided to the central database -- Protected**

183 **information.**

184 (1) The information required to be recorded under Sections 13-32a-103 and  
185 13-32a-104 that is capable of being transmitted electronically shall be transmitted  
186 electronically to the central database on the next business day following the transaction.

187 (2) The pawnbroker shall maintain all pawn tickets generated by the pawnshop and  
188 shall maintain the tickets in a manner so that the tickets are available to local law enforcement  
189 agencies as required by this chapter and as requested by any law enforcement agency as part of  
190 an investigation or reasonable random inspection conducted pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

213 (c) the pawnshop has not provided documentation regarding its inability to solve the

214 malfunction as required under Subsection (4).

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

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

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

220 **13-32a-107. Deadline for registers to be electronic -- Notice for updating.**

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

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

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

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

233 **13-32a-108. Retention of records -- Reasonable inspection.**

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

236 (2) (a) A law enforcement agency may conduct random reasonable inspections of  
237 pawnshops to monitor compliance with this chapter.

238 (b) Inspections shall be performed during the regular business hours of the pawnshop.

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

240 **13-32a-109. Holding period for pawned articles.**

241 (1) (a) The pawnbroker shall hold all articles pawned or sold to him for not fewer than  
242 30 days after the date of receipt of the article, except that the pawnbroker may within this time  
243 period return an article to the person who pawned it.

244 (b) This Subsection (1) does not preclude a law enforcement agency from requiring a

245 pawnbroker to hold an article longer than 30 days if necessary in the course of an investigation.

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

249 (a) states the active case number;

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

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

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

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

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

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

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

267 (6) A hold on an article under Subsection (2) takes precedence over any request to  
268 claim or purchase the article subject to the hold.

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

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

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

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

275 (8) If the article is subject to an investigation and a criminal prosecution results, the

276 prosecuting agency shall, upon disposition of the case, request restitution to the pawnbroker for  
277 the crimes perpetrated against the pawnshop as a victim of theft by deception in addition to the  
278 request for restitution to the original victim.

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

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

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

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

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

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

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

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

303 **13-32a-110. Penalties.**

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

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

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

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

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

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

310 (2) This section does not prohibit civil action by a governmental entity regarding the

311 pawnbroker's business operation or licenses.

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

313 **13-32a-111. Fees to fund training and central database.**

314 (1) On and after January 1, 2005, each pawnshop in operation shall annually pay \$250

315 to the Department of Financial Institutions, to be deposited in the account.

316 (2) On and after January 1, 2005, each law enforcement agency that participates in the

317 use of the database shall annually pay to the Department of Financial Institutions a fee of \$2

318 per sworn law enforcement officer who is employed by the agency as of January 1 of that year.

319 The fee shall be deposited in the account.

320 (3) The fees under Subsections (1) and (2) shall be paid to the account annually on or

321 before January 30.

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

323 **13-32a-112. Pawnshop Advisory Board -- Membership -- Duties -- Provide**  
324 **training -- Records of compliance.**

325 (1) There is created within the Department of Financial Institutions the Pawnshop  
326 Advisory Board. The board consists of ten voting members and one nonvoting member:

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

328 (b) one representative of the Utah Sheriffs Association;

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

330 (d) five representatives from the pawnshop industry who are appointed by the director

331 of the Utah Commission on Criminal and Juvenile Justice (CCJJ) and who represent five

332 separate pawnshops, each owned by a separate person or entity;

333 (e) one law enforcement officer who is appointed by the board members under

334 Subsections (1)(a) through (d);

335 (f) one law enforcement officer whose work regularly involves pawnshops and who is

336 appointed by the board members under Subsections (1)(a) through (d); and

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

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

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

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

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

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

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

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

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

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

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

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

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

360 **13-32a-113. Pawnbroker Operations Restricted Account.**

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

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

367 (b) The Legislature may appropriate the funds in this account to the board for the costs  
368 of providing training required under this chapter, costs of the central database created in

369 Section 13-32a-105, and for costs of operation of the board.

370 (c) The board shall account to the Department of Financial Institutions for  
371 expenditures.

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

373 (i) training required under this chapter;

374 (ii) operation of the database;

375 (iii) operation of the board; and

376 (iv) costs of operation of the board.

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

378 **13-32a-114. Preemption of local ordinances -- Exceptions.**

379 (1) This chapter preempts all city, county, and other local ordinances governing  
380 pawnshops, pawnbrokers and pawnbroking transactions, if the ordinances are more restrictive  
381 than the provisions of this chapter or are not consistent with this chapter.

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

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

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

387 (c) enacting zoning ordinances that restrict areas where pawnshops can be located and  
388 the pawnshops' hours of operation.

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

390 **63-2-304. Protected records.**

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

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

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

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

399 (b) the person submitting the information has a greater interest in prohibiting access

400 than the public in obtaining access; and

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

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

407 (4) records the disclosure of which could cause commercial injury to, or confer a  
408 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
409 defined in Subsection 11-13-103(4);

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

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

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

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

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

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

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

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

431 of the subject property, unless:

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

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

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

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

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

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

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

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

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

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

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

461 (13) records that, if disclosed, would reveal recommendations made to the Board of

462 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
463 Board of Pardons and Parole, or the Department of Human Services that are based on the  
464 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
465 jurisdiction;

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

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

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

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

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

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

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

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

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

- 493 (22) drafts, unless otherwise classified as public;
- 494 (23) records concerning a governmental entity's strategy about collective bargaining or  
495 pending litigation;
- 496 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
497 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
498 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 499 (25) records, other than personnel evaluations, that contain a personal recommendation  
500 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
501 personal privacy, or disclosure is not in the public interest;
- 502 (26) records that reveal the location of historic, prehistoric, paleontological, or  
503 biological resources that if known would jeopardize the security of those resources or of  
504 valuable historic, scientific, educational, or cultural information;
- 505 (27) records of independent state agencies if the disclosure of the records would  
506 conflict with the fiduciary obligations of the agency;
- 507 (28) records of a public institution of higher education regarding tenure evaluations,  
508 appointments, applications for admissions, retention decisions, and promotions, which could be  
509 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public  
510 Meetings, provided that records of the final decisions about tenure, appointments, retention,  
511 promotions, or those students admitted, may not be classified as protected under this section;
- 512 (29) records of the governor's office, including budget recommendations, legislative  
513 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
514 policies or contemplated courses of action before the governor has implemented or rejected  
515 those policies or courses of action or made them public;
- 516 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
517 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
518 recommendations in these areas;
- 519 (31) records provided by the United States or by a government entity outside the state  
520 that are given to the governmental entity with a requirement that they be managed as protected  
521 records if the providing entity certifies that the record would not be subject to public disclosure  
522 if retained by it;
- 523 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body

524 except as provided in Section 52-4-7;

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

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

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

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

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

542 (a) the donor requests anonymity in writing;

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

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

549 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and  
550 73-18-13;

551 (39) a notification of workers' compensation insurance coverage described in Section  
552 34A-2-205;

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

555 the institution:

556 (i) unpublished lecture notes;

557 (ii) unpublished research notes and data;

558 (iii) unpublished manuscripts;

559 (iv) creative works in process;

560 (v) scholarly correspondence; and

561 (vi) confidential information contained in research proposals; and

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

563 (41) (a) records in the custody or control of the Office of Legislative Auditor General

564 that would reveal the name of a particular legislator who requests a legislative audit prior to the

565 date that audit is completed and made public; and

566 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

567 Office of the Legislative Auditor General is a public document unless the legislator asks that

568 the records in the custody or control of the Office of Legislative Auditor General that would

569 reveal the name of a particular legislator who requests a legislative audit be maintained as

570 protected records until the audit is completed and made public;

571 (42) records that provide detail as to the location of an explosive, including a map or

572 other document that indicates the location of:

573 (a) a production facility; or

574 (b) a magazine;

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

576 (44) information contained in the Management Information System and Licensing

577 Information System described in Title 62A, Chapter 4a, Child and Family Services; ~~and~~

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

579 National Guard's federal mission[-]; and

580 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency in

581 compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act.

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

583 **76-6-408. Receiving stolen property -- Duties of pawnbrokers.**

584 (1) A person commits theft if he receives, retains, or disposes of the property of

585 another knowing that it has been stolen, or believing that it probably has been stolen, or who

586 conceals, sells, withholds or aids in concealing, selling, or withholding the property from the  
587 owner, knowing the property to be stolen, intending to deprive the owner of it.

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

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

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

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

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

596 (c) is a pawnbroker or person who has or operates a business dealing in or collecting

597 used or secondhand merchandise or personal property, or an agent, employee, or representative

598 of a pawnbroker or person who buys, receives, or obtains property and fails to require the seller

599 or person delivering the property to:

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

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

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

604 (3) Every pawnbroker or person who has or operates a business dealing in or collecting  
605 used or secondhand merchandise or personal property, and every agent, employee, or

606 representative of a pawnbroker or person who fails to comply with the requirements of

607 Subsection (2)(c) [~~(d) shall be~~] is presumed to have bought, received, or obtained the property

608 knowing it to have been stolen or unlawfully obtained. This presumption may be rebutted by  
609 proof.

610 (4) When, in a prosecution under this section, it appears from the evidence that the

611 defendant was a pawnbroker or a person who has or operates a business dealing in or collecting  
612 used or secondhand merchandise or personal property, or was an agent, employee, or

613 representative of a pawnbroker or person, that the defendant bought, received, concealed, or

614 withheld the property without obtaining the information required in Subsection (2)(d), then the

615 burden shall be upon the defendant to show that the property bought, received, or obtained was  
616 not stolen.

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

619 (6) As used in this section:

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

621 (b) "Pawnbroker" means a person who:

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

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

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

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

632 Section 17. **Effective date.**

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

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**Legislative Review Note**

as of 2-17-04 9:13 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

This bill creates the General Fund Restricted - Pawnbroker Operations Restricted Account which is funded from fees and penalties. Financial Institutions will need \$45,500 from that account.

|                  | <u>FY 2005</u><br><u>Approp.</u> | <u>FY 2006</u><br><u>Approp.</u> | <u>FY 2005</u><br><u>Revenue</u> | <u>FY 2006</u><br><u>Revenue</u> |
|------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| Restricted Funds | \$45,500                         | \$45,500                         | \$45,500                         | \$45,500                         |
| <b>TOTAL</b>     | <b>\$45,500</b>                  | <b>\$45,500</b>                  | <b>\$45,500</b>                  | <b>\$45,500</b>                  |

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**Individual and Business Impact**

Pawnbrokers will pay annual fees of \$250 each to maintain the database. They will incur other costs to comply with the provisions of the bill that will vary according to individual circumstances. Local governments will pay \$2 per sworn officer.

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**Office of the Legislative Fiscal Analyst**