

Representative Rebecca D. Lockhart proposes the following substitute bill:

1 **COMMERCIAL TRANSACTIONS OF PERSONAL**
2 **PROPERTY**

3 2006 GENERAL SESSION
4 STATE OF UTAH

5 **Chief Sponsor: Rebecca D. Lockhart**

6 Senate Sponsor: _____
7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Pawnshop Transaction Information Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies procedures for holding items sold to a pawnshop rather than pawned to the
14 pawnshop;
- 15 ▶ provides that criminal code compliance regarding the legal right to the property,
16 fingerprinting, and picture identification requirements are applicable only to items
17 pawned;
- 18 ▶ allows the pawnbroker to establish with the pledgor the period for holding a pawned
19 item;
- 20 ▶ requires a law enforcement agency outside the database reporting jurisdiction to
21 advise the local law enforcement agency of any property seized from a pawnshop;
- 22 ▶ establishes an annual fee of \$750 to provide out-of-state law enforcement agencies
23 access to the database; and
- 24 ▶ requires that the Legislature appropriate funds for the database costs for training,



25 operation, the board, and related division expenses, to cover costs not addressed by current user
26 fees.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **13-32a-102**, as last amended by Chapter 256, Laws of Utah 2005

34 **13-32a-103**, as enacted by Chapter 299, Laws of Utah 2004

35 **13-32a-109**, as enacted by Chapter 299, Laws of Utah 2004

36 **13-32a-111**, as last amended by Chapter 256, Laws of Utah 2005

37 **13-32a-113**, as last amended by Chapter 256, Laws of Utah 2005

38 ENACTS:

39 **13-32a-109.5**, Utah Code Annotated 1953

40 **13-32a-109.8**, Utah Code Annotated 1953



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

43 Section 1. Section **13-32a-102** is amended to read:

44 **13-32a-102. Definitions.**

45 As used in this chapter:

46 (1) "Account" means the Pawnbroker Operations Restricted Account created in Section
47 13-32a-113.

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

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

51 (4) "Division" means the Division of Consumer Protection in Title 13, Chapter 1,
52 Department of Commerce.

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

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

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

58 (6) "Local law enforcement agency" means [a] the law enforcement agency that has
59 direct responsibility for ensuring compliance with central database reporting requirements for
60 the jurisdiction [over the location] where the pawnshop is located.

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

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

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

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

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

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

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

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

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

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

80 (13) "Pledgor" means a person who conducts a pawn transaction with a pawnshop.

81 [~~(13)~~] (14) "Property" means any tangible personal property.

82 [~~(14)~~] (15) "Register" means the record of information required under this chapter to be
83 maintained by the pawnbroker. The register is an electronic record that is in a format that is
84 compatible with the central database.

85 Section 2. Section **13-32a-103** is amended to read:

86 **13-32a-103. Compliance with criminal code.**

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

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

93 Section 3. Section **13-32a-109** is amended to read:

94 **13-32a-109. Holding period for pawned articles.**

95 [~~(1)(a) The pawnbroker shall hold all articles pawned or sold to him for not fewer than~~
96 ~~30 days after the date of receipt of the article, except that the pawnbroker may within this time~~
97 ~~period return an article to the person who pawned it.]~~

98 (1) (a) The pawnbroker may sell any article pawned to him:

99 (i) after the expiration of the contract period between the pawnbroker and the pledgor;
100 and

101 (ii) if the pawnbroker has complied with the central database requirements in
102 accordance with Section 13-32a-106.

103 (b) If an article is purchased by the pawnbroker, the pawnbroker may sell the article at
104 any time after the pawnbroker has complied with the requirements of Section 13-32a-106
105 regarding reporting to the central database.

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

109 (c) This Subsection (1) does not preclude a law enforcement agency from requiring a
110 pawnbroker to hold an article if necessary in the course of an investigation.

111 (i) If the article was pawned, the law enforcement agency may require the article be
112 held beyond the terms of the contract between the pledgor and the pawn broker.

113 (ii) If the article was sold to the pawnbroker, the law enforcement agency may require
114 the article be held if the pawnbroker has not sold the article.

115 (d) If the law enforcement agency requesting a hold on property under this Subsection
116 (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify
117 the local law enforcement agency of the request and the pawnshop.

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

121 (a) states the active case number;

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

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

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

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

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

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

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

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

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

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

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

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

147 ~~[(8) If the article is subject to an investigation and a criminal prosecution results, the~~
148 ~~prosecuting agency shall, upon disposition of the case, request restitution to the pawnbroker for~~

149 the crimes perpetrated against the pawnshop as a victim of theft by deception in addition to the
150 request for restitution to the original victim.]

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

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

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

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

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

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

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

174 Section 4. Section **13-32a-109.5** is enacted to read:

175 **13-32a-109.5. Seizure of pawned property.**

176 (1) If a law enforcement agency determines seizure of pawned or sold property is
177 necessary during the course of a criminal investigation in addition to the holding provisions
178 under Section 13-32a-109, the law enforcement agency shall:

179 (a) notify the pawnshop of the specific item to be seized;

180 (b) issue to the pawnshop a seizure ticket in a form approved by the division and that:

181 (i) provides the active case number related to the item to be seized;

182 (ii) provides the date of the seizure request;

183 (iii) describes the article to be seized; and

184 (iv) includes any information that facilitates the pawnbroker's ability to track the article
185 when the prosecution agency takes over the case.

186 (2) If the law enforcement agency seizing the pawned or sold property is not the local
187 law enforcement agency, the seizing agency shall, in addition to compliance with Subsection

188 (1):

189 (a) notify the local law enforcement agency prior to any seizure; and

190 (b) facilitate the seizure of the pawned property in cooperation with the local law
191 enforcement agency to provide the pawnshop the ability to monitor the proceedings under
192 Section 13-32a-109.8.

193 Section 5. Section **13-32a-109.8** is enacted to read:

194 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

195 (1) If the article pawned or sold under Section 13-32a-109 is subject to an investigation
196 and a criminal prosecution results, the prosecuting agency shall, prior to disposition of the case:

197 (a) request restitution to the pawnbroker for the crimes perpetrated against the
198 pawnshop as a victim of theft by deception; and

199 (b) request restitution for the original victim.

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

204 (3) If the original victim does not pursue criminal charges or does not cooperate in the
205 prosecution of the property theft crimes charged against the defendant and the theft by
206 deception charges committed against the pawnshop, then the original victim must pay to the
207 pawnshop the amount of money financed by the pawnshop to the defendant in order to obtain
208 the property.

209 (4) (a) The victim's cooperation in the prosecution of the property crimes and in the
210 prosecution of the theft by deception offense committed against the pawnshop suspends the

211 requirements of Subsections (2) and (3).

212 (b) If the victim cooperates in the prosecution under Subsection (4)(a) and the
213 defendants are convicted, the prosecuting agency shall direct the pawnshop to turn over the
214 property to the victim.

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

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

221 (6) At all times during the course of a criminal investigation and subsequent
222 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawnshop
223 subject to the hold unless the pawned article has been seized by the law enforcement agency
224 pursuant to Section 13-32a-109.5.

225 Section 6. Section **13-32a-111** is amended to read:

226 **13-32a-111. Fees to fund training and central database.**

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

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

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

235 (4) (a) If a law enforcement agency outside Utah requests access to the central
236 database, the requesting agency shall pay a yearly fee of \$750 for the fiscal year beginning July
237 1, 2006, which shall be deposited in the account.

238 (b) The board may establish the fee amount for fiscal years beginning on and after July
239 1, 2007 under Section 63-38-3.2.

240 Section 7. Section **13-32a-113** is amended to read:

241 **13-32a-113. Pawnbroker Operations Restricted Account.**

- 242 (1) There is created within the General Fund a restricted account known as the
243 Pawnbroker Operations Restricted Account.
- 244 (2) (a) The account shall be funded from the fees and administrative fines imposed and
245 collected under Sections 13-32a-106, 13-32a-107, 13-32a-110, and 13-32a-111. These fees
246 and administrative fines shall be paid to the division, which shall deposit them in the account.
- 247 (b) The Legislature [~~may~~] shall appropriate the funds in this account:
- 248 (i) to the board for the costs of providing training required under this chapter, costs of
249 the central database created in Section 13-32a-105, and for costs of operation of the board; and
- 250 (ii) to the division for management of fees and penalties paid under this chapter.
- 251 (c) The board shall account to the division for expenditures.
- 252 (d) The board shall account separately for expenditures for:
- 253 (i) training required under this chapter;
- 254 (ii) operation of the database;
- 255 (iii) operation of the board; and
- 256 (iv) costs of operation of the board.