

Representative Jennifer M. Seelig proposes the following substitute bill:

**PAWNSHOP AND SECONDHAND MERCHANDISE
TRANSACTION INFORMATION ACT AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Commerce and Trade Code relating to the Pawnshop and Secondhand Merchandise Transaction Information Act.

Highlighted Provisions:

This bill:

- ▶ requires a law enforcement agency to respond to a registered or certified letter from a pawn or secondhand business regarding an expired hold within 30 days by either:
 - confirming the expiration of the holding period and releasing the hold; or
 - providing written notice to the pawn or secondhand business that a court order has continued the period of time the item must be held;
- ▶ provides procedures for law enforcement to give the written notice;
- ▶ provides that if a law enforcement agency fails to respond the registered or certified mail within 30 days, the pawn or secondhand business may treat the item as if acquired in the ordinary course of business;
- ▶ adds the requirement that the article be required during the course of a criminal investigation when a law enforcement agency determines that seizure of pawned or sold property is necessary; and



26 ▶ requires a pawnshop or secondhand business to retain possession of an item until
27 the resolution of the criminal adjudication or investigation, unless:

- 28 • the course of the criminal investigation requires the seizure of the item; or
- 29 • the item has been held for 180 days and the holding period has lapsed and no
30 person has been charged

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **13-32a-109**, as last amended by Laws of Utah 2009, Chapter 272

38 **13-32a-109.5**, as last amended by Laws of Utah 2009, Chapter 272

39 **13-32a-109.8**, as last amended by Laws of Utah 2010, Chapter 378



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

42 Section 1. Section **13-32a-109** is amended to read:

43 **13-32a-109. Holding period for articles.**

44 (1) (a) The pawnbroker may sell any article pawned to the pawnbroker:

- 45 (i) after the expiration of the contract period between the pawnbroker and the pledgor;

46 and

- 47 (ii) if the pawnbroker has complied with the requirements of Section 13-32a-106
48 regarding reporting to the central database and Section 13-32a-103.

49 (b) If an article, including scrap jewelry, is purchased by a pawn or secondhand
50 business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article
51 after the pawn or secondhand business or coin dealer has held the article for 15 days and
52 complied with the requirements of Section 13-32a-106 regarding reporting to the central
53 database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are
54 not required to hold precious metals or coins under this Subsection (1)(b).

55 (c) This Subsection (1) does not preclude a law enforcement agency from requiring a
56 pawn or secondhand business to hold an article if necessary in the course of an investigation.

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

59 (ii) If the article was sold to the pawn or secondhand business, the law enforcement
60 agency may require the article be held if the pawn or secondhand business has not sold the
61 article.

62 (d) If the law enforcement agency requesting a hold on property under this Subsection
63 (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify
64 the local law enforcement agency of the request and also the pawn or secondhand business.

65 (2) If a law enforcement agency requires the pawn or secondhand business to hold an
66 article as part of an investigation, the agency shall provide to the pawn or secondhand business
67 a hold ticket issued by the agency, which:

68 (a) states the active case number;

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

70 (c) facilitates the ability of the pawn or secondhand business to track the article when
71 the prosecution takes over the case.

72 (3) If an article is not seized by a law enforcement agency that has placed a hold on the
73 property, the property [~~may~~] shall remain in the custody of the pawn or secondhand business
74 until further disposition by the law enforcement agency, and as consistent with this chapter.

75 (4) The initial hold by a law enforcement agency is for a period of 90 days. If the
76 article is not seized by the law enforcement agency, the article shall remain in the custody of
77 the pawn or secondhand business and is subject to the hold unless exigent circumstances
78 require the purchased or pawned article to be seized by the law enforcement agency.

79 (5) (a) A law enforcement agency may extend any hold for up to an additional 90 days
80 when exigent circumstances require the extension.

81 (b) When there is an extension of a hold under Subsection (5)(a), the requesting law
82 enforcement agency shall notify the pawn or secondhand business that is subject to the hold
83 prior to the expiration of the initial 90 days.

84 (c) A law enforcement agency may not hold an item for more than the 180 days
85 allowed under Subsections (5)(a) and (b) without obtaining a court order authorizing the hold.

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

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

90 (a) notify the pawn or secondhand business in writing that the hold or seizure has been
91 terminated;

92 (b) return the article subject to the seizure to the pawn or secondhand business; or

93 (c) if the article is not returned to the pawn or secondhand business, advise the pawn or
94 secondhand business either in writing or electronically of the specific alternative disposition of
95 the article.

96 (8) If the law enforcement agency does not notify the pawn or secondhand business
97 that a hold on an item has expired, the pawn or secondhand business shall send a letter by
98 registered or certified United States mail to the law enforcement agency that ordered the hold
99 and inform the agency that the holding period has expired. The law enforcement agency shall
100 respond within 30 days by:

101 (a) confirming that the holding period has expired and that the pawn or secondhand
102 business may manage the item as if acquired in the ordinary course of business; or

103 (b) providing written notice to the pawn or secondhand business that a court order has
104 continued the period of time for which the item shall be held.

105 (9) The written notice under Subsection (8)(b) is considered provided when:

106 (a) personally delivered to the pawn or secondhand business with a signed receipt of
107 delivery;

108 (b) delivered to the pawn or secondhand business by registered or certified United
109 States mail; or

110 (c) delivered by any other means with the mutual assent of the law enforcement agency
111 and the pawn or secondhand business.

112 (10) If the law enforcement agency does not respond within 30 days under Subsection
113 (8), the pawn or secondhand business may manage the item as if acquired in the ordinary
114 course of business.

115 Section 2. Section **13-32a-109.5** is amended to read:

116 **13-32a-109.5. Seizure of property.**

117 (1) If a law enforcement agency determines seizure of pawned or sold property is
118 necessary under Section 13-32a-109.8 during the course of a criminal investigation in addition

119 to the holding provisions under Section 13-32a-109, the law enforcement agency shall:

- 120 (a) notify the pawnshop of the specific item to be seized;
- 121 (b) issue to the pawnshop a seizure ticket in a form approved by the division and that:
- 122 (i) provides the active case number related to the item to be seized;
- 123 (ii) provides the date of the seizure request;
- 124 (iii) provides the reason for the seizure under Section 13-32a-109.8;
- 125 [~~(iii)~~] (iv) describes the article to be seized; [and]
- 126 (v) states each reason the article is necessary during the course of a criminal
- 127 investigation under Section 13-32A-109.8; and
- 128 [~~(iv)~~] (vi) includes any information that facilitates the pawnbroker's ability to track the
- 129 article when the prosecution agency takes over the case.

130 (2) If the purpose for the seizure of an article under this section is terminated before

131 final disposition of the criminal case and the property is no longer needed as evidence, the law

132 enforcement agency that required the seizure shall within 15 days after the property is no

133 longer needed as evidence:

134 (a) notify the pawn or secondhand business in writing that the purpose for the seizure

135 has been terminated and the property is available for return to the pawn or secondhand

136 business; or

137 (b) return the article to the pawn or secondhand business.

138 [~~(2)~~] (3) If the law enforcement agency seizing the pawned or sold property is not the

139 local law enforcement agency, the seizing agency shall, in addition to compliance with

140 Subsection (1):

- 141 (a) notify the local law enforcement agency prior to any seizure; and
- 142 (b) facilitate the seizure of the pawned property in cooperation with the local law
- 143 enforcement agency to provide the pawnshop or secondhand business the ability to monitor the
- 144 proceedings under Section 13-32a-109.8.

145 Section 3. Section **13-32a-109.8** is amended to read:

146 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

147 (1) If the article pawned or sold under Section 13-32a-109 is subject to an investigation

148 and a criminal prosecution results, the prosecuting agency shall, prior to disposition of the case:

- 149 (a) request restitution to the pawn or secondhand business for the crimes perpetrated

150 against the pawn or secondhand business as a victim of theft by deception; and

151 (b) request restitution for the original victim.

152 (2) If the original victim of the theft of the property files a police report and the
153 property is subsequently located at a pawn or secondhand business, the victim shall fully
154 cooperate with the prosecution of the crimes perpetrated against the pawn or secondhand
155 business as a victim of theft by deception, in order to qualify for restitution regarding the
156 property.

157 (3) If the original victim does not pursue criminal charges or does not cooperate in the
158 prosecution of the property theft crimes charged against the defendant and the theft by
159 deception charges committed against the pawn or secondhand business, then the original victim
160 shall pay to the pawn or secondhand business the amount of money financed or paid by the
161 pawn or secondhand business to the defendant in order to obtain the property.

162 (4) (a) The victim's cooperation in the prosecution of the property crimes and in the
163 prosecution of the theft by deception offense committed against the pawn or secondhand
164 business suspends the requirements of Subsections (2) and (3).

165 (b) If the victim cooperates in the prosecution under Subsection (4)(a) and the
166 defendants are convicted, the prosecuting agency shall direct the pawn or secondhand business
167 to turn over the property to the victim.

168 (c) Upon receipt of notice from the prosecuting agency that the property [~~must~~] shall be
169 turned over to the victim, the pawn or secondhand business shall return the property to the
170 victim as soon as reasonably possible.

171 (5) The pawnshop or secondhand business shall retain possession of the item until the
172 resolution of the criminal adjudication or investigation, unless:

173 (a) necessary during the course of a criminal investigation and actual physical
174 possession of an article purchased or pawned is essential to a law enforcement purpose of:

175 (i) fingerprinting of an article;

176 (ii) chemical testing of an article;

177 (iii) use of an article as an exhibit at trial, as authorized by the prosecutor; or

178 (iv) if the article contains unique or sensitive personal identifying information; or

179 (b) the item has been held for a period of 180 days, the holding period has lapsed, and
180 no one has been formally charged or indicted.

181 [~~5~~] (6) A pawn or secondhand business shall fully cooperate in the prosecution of the
182 property crimes committed against the original victim and the property crime of theft by
183 deception committed against the pawn or secondhand business in order to participate in any
184 court-ordered restitution.

185 [~~6~~] (7) At all times during the course of a criminal investigation and subsequent
186 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or
187 secondhand business subject to the hold unless a pawned or sold article has been seized by the
188 law enforcement agency pursuant to Section 13-32a-109.5.