

Representative Jennifer M. Seelig proposes the following substitute bill:

SECOND HAND ITEM TRANSACTIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act.

Highlighted Provisions:

This bill:

- ▶ authorizes local government to enforce the chapter;
- ▶ defines original victim to include a representative of the victim;
- ▶ changes the fingerprint requirement from the thumb to the index finger;
- ▶ requires that pawn and secondhand businesses advise persons attempting to sell or pawn property that they must comply with the statutory unclaimed property provisions;
- ▶ removes the requirement that the pawn and secondhand database respond to inquiries from persons claiming ownership of property;
- ▶ deletes current language describing procedures concerning pawn and secondhand business possession of property subject to law enforcement investigation and provides new language regarding possession by the business, and including changes in the obligation of the victim to cooperate with law enforcement;
- ▶ provides that if there is a conflict between this chapter and the current code



- 26 regarding property not needed as evidence, this chapter takes precedence;
- 27 ▶ imposes a class B criminal misdemeanor penalty on specific conduct;
- 28 ▶ provides that a pawn or secondhand business may not sell to a person younger than
- 29 18 or a person who appears to be under the influence of alcohol or controlled
- 30 substances;
- 31 ▶ increases the database fees in the chapter for pawn and secondhand businesses;
- 32 ▶ increases the membership of the Secondhand Merchandise Advisory Board by
- 33 adding a representative of municipal prosecutors and increasing the number of
- 34 members who represent secondhand businesses from two to three;
- 35 ▶ provides that the board may propose administrative rules to the division regarding
- 36 best practices and standardized property descriptions;
- 37 ▶ provides a process for pawn and secondhand businesses to submit complaints to the
- 38 Peace Officers Standards and Training Division regarding law enforcement
- 39 practices;
- 40 ▶ increases the fees for database use for each sworn peace officer in an agency, and
- 41 for out-of-state agencies; and
- 42 ▶ requires a that the advisory board quorum be greater than a simple majority of the
- 43 members.

44 **Money Appropriated in this Bill:**

45 None

46 **Other Special Clauses:**

47 None

48 **Utah Code Sections Affected:**

49 AMENDS:

- 50 **13-32a-102**, as last amended by Laws of Utah 2009, Chapter 272
- 51 **13-32a-102.5**, as last amended by Laws of Utah 2009, Chapter 272
- 52 **13-32a-104**, as last amended by Laws of Utah 2008, Chapter 333
- 53 **13-32a-106**, as last amended by Laws of Utah 2007, Chapter 352
- 54 **13-32a-106.5**, as last amended by Laws of Utah 2009, Chapter 272
- 55 **13-32a-108**, as last amended by Laws of Utah 2009, Chapter 272
- 56 **13-32a-109**, as last amended by Laws of Utah 2011, Chapter 348

- 57 **13-32a-109.5**, as last amended by Laws of Utah 2011, Chapter 348
- 58 **13-32a-110**, as last amended by Laws of Utah 2009, Chapter 272
- 59 **13-32a-111**, as last amended by Laws of Utah 2009, Chapters 183 and 272
- 60 **13-32a-112**, as last amended by Laws of Utah 2009, Chapter 272
- 61 **13-32a-112.5**, as enacted by Laws of Utah 2008, Chapter 333
- 62 **77-24-2**, as last amended by Laws of Utah 2005, Chapter 126

63 ENACTS:

- 64 **13-32a-110.5**, Utah Code Annotated 1953
- 65 **13-32a-115**, Utah Code Annotated 1953
- 66 **13-32a-116**, Utah Code Annotated 1953
- 67 **13-32a-117**, Utah Code Annotated 1953

68 REPEALS:

- 69 **13-32a-109.8**, as last amended by Laws of Utah 2011, Chapter 348



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

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

73 **13-32a-102. Definitions.**

74 As used in this chapter:

75 (1) "Account" means the Pawnbroker and Secondhand Merchandise Operations

76 Restricted Account created in Section 13-32a-113.

77 (2) "Antique item" means an item:

78 (a) that is generally older than 25 years;

79 (b) whose value is based on age, rarity, condition, craftsmanship, or collectability;

80 (c) that is furniture or other decorative objects produced in a previous time period, as

81 distinguished from new items of a similar nature; and

82 (d) obtained from auctions, estate sales, other antique shops, and individuals.

83 (3) "Antique shop" means a business operating at an established location and that

84 offers for sale antique items.

85 (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board

86 created by this chapter.

87 (5) "Central database" or "database" means the electronic database created and

88 operated under Section 13-32a-105.

89 (6) "Coin" means a piece of currency, usually metallic and usually in the shape of a
90 disc that is:

91 (a) stamped metal, and issued by a government as monetary currency; or

92 (b) (i) worth more than its current value as currency; and

93 (ii) worth more than its metal content value.

94 (7) "Coin dealer" means a person or business whose sole business activity is the selling
95 and purchasing of coins and precious metals.

96 (8) "Commercial grade precious metals" or "precious metals" means ingots, monetized
97 bullion, art bars, medallions, medals, tokens, and currency that are marked by the refiner or
98 fabricator indicating their fineness and include:

99 (a) .99 fine or finer ingots of gold, silver, platinum, palladium, or other precious
100 metals; or

101 (b) .925 fine sterling silver ingots, art bars, and medallions.

102 (9) "Division" means the Division of Consumer Protection in Title 13, Chapter 1,
103 Department of Commerce.

104 (10) "Identification" means a form of positive identification issued by a governmental
105 entity and that:

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

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

109 (11) "Local law enforcement agency" means the law enforcement agency that has
110 direct responsibility for ensuring compliance with central database reporting requirements for
111 the jurisdiction where the pawnshop or secondhand business is located.

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

114 (13) "Original victim" means a victim who is not a party to the pawn or sale transaction
115 and includes an authorized representative designated in writing by the original victim.

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

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

118 (b) deals in the purchase, exchange, or possession of personal property on condition of

119 selling the same property back again to the pledgor or depositor;

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

123 (d) deals in the purchase, exchange, or sale of used or secondhand merchandise or
124 personal property; or

125 (e) engages in a licensed business enterprise as a pawnshop.

126 (15) "Pawn and secondhand business" means any business operated by a pawnbroker
127 or secondhand merchandise dealer, or the owner or operator of the business.

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

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

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

135 (19) "Pledgor" means a person who conducts a pawn transaction with a pawnshop.

136 (20) "Property" means any tangible personal property.

137 (21) "Register" means the record of information required under this chapter to be
138 maintained by pawn and secondhand businesses. The register is an electronic record that is in a
139 format that is compatible with the central database.

140 (22) "Scrap jewelry" means any item purchased solely:

141 (a) for its gold, silver, or platinum content; and

142 (b) for the purpose of reuse of the metal content.

143 (23) (a) "Secondhand merchandise dealer" means an owner or operator of a business
144 that:

145 (i) deals in the purchase, exchange, or sale of used or secondhand merchandise or
146 personal property; and

147 (ii) does not function as a pawnbroker.

148 (b) "Secondhand merchandise dealer" does not include:

149 (i) the owner or operator of an antique shop;

- 150 (ii) any class of businesses exempt by administrative rule under Section 13-32a-112.5;
 - 151 (iii) any person or entity who operates auction houses, flea markets, or vehicle, vessel,
152 and outboard motor dealers as defined in Section 41-1a-102;
 - 153 (iv) the sale of secondhand goods at events commonly known as "garage sales," "yard
154 sales," or "estate sales";
 - 155 (v) the sale or receipt of secondhand books, magazines, or post cards;
 - 156 (vi) the sale or receipt of used merchandise donated to recognized nonprofit, religious,
157 or charitable organizations or any school-sponsored association, and for which no
158 compensation is paid;
 - 159 (vii) the sale or receipt of secondhand clothing and shoes;
 - 160 (viii) any person offering his own personal property for sale, purchase, consignment, or
161 trade via the Internet;
 - 162 (ix) any person or entity offering the personal property of others for sale, purchase,
163 consignment, or trade via the Internet, when that person or entity does not have, and is not
164 required to have, a local business or occupational license or other authorization for this activity;
 - 165 (x) any owner or operator of a retail business that receives used merchandise as a
166 trade-in for similar new merchandise;
 - 167 (xi) an owner or operator of a business that contracts with other persons or entities to
168 offer those persons' secondhand goods for sale, purchase, consignment, or trade via the
169 Internet;
 - 170 (xii) any dealer as defined in Section 76-10-901, which concerns scrap metal and
171 secondary metals; or
 - 172 (xiii) the purchase of items in bulk that are:
 - 173 (A) sold at wholesale in bulk packaging;
 - 174 (B) sold by a person licensed to conduct business in Utah; and
 - 175 (C) regularly sold in bulk quantities as a recognized form of sale.
- 176 Section 2. Section **13-32a-102.5** is amended to read:
- 177 **13-32a-102.5. Administration and enforcement.**
- 178 (1) The division shall administer and enforce this chapter in accordance with the
179 authority under Title 13, Chapter 2, Division of Consumer Protection.
 - 180 (2) The attorney general, upon request, shall give legal advice to, and act as counsel

181 for, the division in the exercise of its responsibilities under this chapter.

182 (3) Reasonable attorney fees, costs, and interest shall be awarded to the division in any
183 action brought to enforce the provisions of this chapter.

184 (4) Municipal and county law enforcement agencies, prosecutorial agencies, and
185 governmental agencies may enforce the criminal and civil provisions of this chapter.

186 Section 3. Section **13-32a-104** is amended to read:

187 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
188 **items.**

189 (1) Every pawnbroker or secondhand merchandise dealer shall keep a register of each
190 article of property a person pawns or sells to the pawnbroker or secondhand merchandise
191 dealer, except as provided in Subsection 13-32a-102(23)(b). Every pawn and secondhand
192 business owner or operator, or his employee, shall enter the following information regarding
193 every article pawned or sold to the owner or employee:

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

195 (b) the pawn transaction ticket number, if the article is pawned;

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

197 (d) the following information regarding the person who pawns or sells the article:

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

199 (ii) the number of the driver license or other form of positive identification presented
200 by the person, and notations of discrepancies if the person's physical description, including
201 gender, height, weight, race, age, hair color, and eye color, does not correspond with
202 identification provided by the person;

203 (iii) the person's signature; and

204 (iv) a legible fingerprint of the person's right ~~[thumb]~~ index finger, or if the right
205 ~~[thumb]~~ index finger cannot be fingerprinted, a legible fingerprint of the person with a written
206 notation identifying the fingerprint and the reason why the ~~[thumb]~~ index finger's print was
207 unavailable;

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

209 (f) the identification of the pawn or secondhand business owner or the employee,
210 whoever is making the register entry; and

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

212 marks such as:

- 213 (i) names, brand names, numbers, serial numbers, model numbers, color,
- 214 manufacturers' names, and size;
- 215 (ii) metallic composition, and any jewels, stones, or glass;
- 216 (iii) any other marks of identification or indicia of ownership on the article;
- 217 (iv) the weight of the article, if the payment is based on weight;
- 218 (v) any other unique identifying feature;
- 219 (vi) gold content, if indicated; and
- 220 (vii) if multiple articles of a similar nature are delivered together in one transaction and
- 221 the articles do not bear serial or model numbers and do not include precious metals or
- 222 gemstones, such as musical or video recordings, books, or hand tools, the description of the
- 223 articles is adequate if it includes the quantity of the articles and a description of the type of
- 224 articles delivered.

225 (2) A pawn or secondhand business may not accept any personal property if, upon

226 inspection, it is apparent that serial numbers, model names, or identifying characteristics have

227 been intentionally defaced on that article of property.

228 (3) (a) A person may not pawn or sell any property to a business regulated under this

229 chapter if the property is subject to being turned over to a law enforcement agency in

230 accordance with Title 77, Chapter 24, Unclaimed Personal Property.

231 (b) If an individual attempts to sell or pawn property to a business regulated under this

232 chapter and the employee or owner of the business knows or has reason to know that the

233 property is subject to Title 77, Chapter 24, Unclaimed Personal Property, the employee or

234 owner shall advise the individual of the requirements of Title 77, Chapter 24, Unclaimed

235 Personal Property, and may not receive the property in pawn or sale.

236 (4) A violation of this section is a Class B misdemeanor and is also subject to civil

237 penalties under Section 13-32a-110.

238 Section 4. Section **13-32a-106** is amended to read:

239 **13-32a-106. Transaction information provided to the central database --**

240 **Protected information.**

241 (1) The information required to be recorded under Sections 13-32a-103 and

242 13-32a-104 that is capable of being transmitted electronically shall be transmitted

243 electronically to the central database on the next business day following the transaction.

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

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

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

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

259 (5) A computer or electronic malfunction does not suspend the pawn or secondhand
260 business' obligation to comply with all other provisions of this chapter.

261 (6) During the malfunction under Subsections (3) and (4), the pawn or secondhand
262 business shall:

263 (a) arrange with the local law enforcement agency a mutually acceptable alternative
264 method by which the pawn or secondhand business provides the required information to the
265 local law enforcement official; and

266 (b) a pawnshop shall maintain the pawn tickets and other related information required
267 under this chapter in a written form.

268 (7) A pawn or secondhand business that violates the electronic transaction reporting
269 requirement of this section is subject to an administrative fine of \$50 per day if:

270 (a) the pawn or secondhand business is unable to submit the information electronically
271 due to a computer or electronic malfunction;

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

273 (c) the pawn or secondhand business has not provided documentation regarding its

274 inability to solve the malfunction as required under Subsection (4).

275 (8) A pawn or secondhand business is not responsible for a delay in transmission of
276 information that results from a malfunction in the central database.

277 (9) A violation of this section is a Class B misdemeanor and is also subject to civil
278 penalties under Section 13-32a-110.

279 Section 5. Section **13-32a-106.5** is amended to read:

280 **13-32a-106.5. Confidentiality of pawn and purchase transactions.**

281 (1) All pawn and purchase transaction records delivered to a local law enforcement
282 official or transmitted to the central database pursuant to Section 13-32a-106 are protected
283 records under Section 63G-2-305. These records may be used only by law enforcement
284 officials and the division and only for the law enforcement and administrative enforcement
285 purposes of:

286 (a) investigating possible criminal conduct involving the property delivered to the
287 pawnbroker or secondhand business in a pawn or purchase transaction;

288 (b) investigating a possible violation of the record keeping or reporting requirements of
289 this chapter when the local law enforcement official, based on a review of the records and
290 information received, has reason to believe that a violation has occurred;

291 (c) responding to an inquiry from [~~a person claiming ownership of described property~~]
292 an insurance company investigating a claim for physical loss of described property by
293 searching the database to determine if property matching the description has been delivered to a
294 pawnbroker or secondhand business by another person in a pawn or purchase transaction and if
295 so, obtaining from the database:

296 (i) a description of the property;

297 (ii) the name and address of the pawnbroker or secondhand business who received the
298 property; and

299 (iii) the name, address, and date of birth of the conveying person; [~~and~~]

300 (d) taking enforcement action under Section 13-2-5 against a pawnbroker or
301 secondhand business[-]; or

302 (e) responding to a request from an insurance company under Subsection (1)(c), which
303 shall be accompanied by the case number assigned by the law enforcement agency that has
304 been filed concerning the described property.

305 (2) (a) A person may not knowingly and intentionally use, release, publish, or
306 otherwise make available to any person or entity any information obtained from the database
307 for any purpose other than those specified in Subsection (1).

308 (b) Each separate violation of Subsection (2)(a) is a class B misdemeanor.

309 (c) Each separate violation of Subsection (2)(a) is subject to a civil penalty not to
310 exceed \$250.

311 Section 6. Section **13-32a-108** is amended to read:

312 **13-32a-108. Retention of records -- Reasonable inspection.**

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

315 (2) (a) A law enforcement agency may conduct random reasonable inspections of pawn
316 or secondhand businesses for the purpose of monitoring compliance with the reporting
317 requirements of this chapter. The inspections may be conducted to:

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

320 (ii) make spot checks of property at the pawn or secondhand business to determine if
321 the property is appropriately reported.

322 (b) Inspections under Subsection (2)(a) shall be performed during the regular business
323 hours of the pawn or secondhand business.

324 (3) A violation of this section is a Class B misdemeanor and is also subject to civil
325 penalties under Section 13-32a-110.

326 Section 7. Section **13-32a-109** is amended to read:

327 **13-32a-109. Holding period for articles.**

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

329 (i) after the expiration of the contract period between the pawnbroker and the pledgor;
330 and

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

333 (b) If an article, including scrap jewelry, is purchased by a pawn or secondhand
334 business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article
335 after the pawn or secondhand business or coin dealer has held the article for 15 days and

336 complied with the requirements of Section 13-32a-106 regarding reporting to the central
337 database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are
338 not required to hold precious metals or coins under this Subsection (1)(b).

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

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

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

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

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

352 (a) states the active case number;

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

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

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

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

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

365 (b) When there is an extension of a hold under Subsection (5)(a), the requesting law
366 enforcement agency shall notify the pawn or secondhand business that is subject to the hold

367 prior to the expiration of the initial 90 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

396 (10) If the law enforcement agency does not respond within 30 days under Subsection
397 (8), the pawn or secondhand business may manage the item as if acquired in the ordinary

398 course of business.

399 (11) A violation of this section is a Class B misdemeanor and is also subject to civil
400 penalties under Section 13-32a-110.

401 Section 8. Section **13-32a-109.5** is amended to read:

402 **13-32a-109.5. Seizure of property.**

403 (1) If a law enforcement agency determines seizure of property pawned or sold
404 [property] to a pawn or secondhand business is necessary under [~~Section 13-32a-109.8~~] this
405 chapter during the course of a criminal investigation, in addition to the holding provisions
406 under Section 13-32a-109, the law enforcement agency shall:

- 407 (a) notify the pawnshop of the specific item to be seized;
- 408 (b) issue to the pawnshop a seizure ticket in a form approved by the division and that:
 - 409 (i) provides the active case number related to the item to be seized;
 - 410 (ii) provides the date of the seizure request;
 - 411 (iii) provides the reason for the seizure [~~under Section 13-32a-109.8~~];
 - 412 (iv) describes the article to be seized;
 - 413 (v) states each reason the article is necessary during the course of a criminal
414 investigation [~~under Section 13-32A-109.8~~]; and
 - 415 (vi) includes any information that facilitates the pawnbroker's ability to track the article
416 when the prosecution agency takes over the case.

417 (2) If the purpose for the seizure of an article under this section is terminated before
418 final disposition of the criminal case and the property is no longer needed as evidence, the law
419 enforcement agency that required the seizure shall within 15 days after the property is no
420 longer needed as evidence:

421 (a) notify the pawn or secondhand business in writing that the purpose for the seizure
422 has been terminated and the property is available for return to the pawn or secondhand
423 business; or

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

425 (3) If the law enforcement agency seizing the pawned or sold property is not the local
426 law enforcement agency, the seizing agency shall, in addition to compliance with Subsection
427 (1):

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

429 (b) facilitate the seizure of the pawned property in cooperation with the local law
430 enforcement agency to provide the pawnshop or secondhand business the ability to monitor the
431 proceedings [~~under Section 13-32a-109.8~~].

432 Section 9. Section **13-32a-110** is amended to read:

433 **13-32a-110. Civil penalties.**

434 (1) A violation of any of the following sections is subject to a civil penalty of not more
435 than \$500:

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

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

438 (c) Section 13-32a-108, retention of records;

439 (d) Section 13-32a-109, holding period for pawned articles;

440 (e) Section 13-32a-111, payment of fees as required; or

441 (f) Section 13-32a-112, training requirements for pawn, secondhand, and coin dealer
442 business employees and officers of participating law enforcement agencies.

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

445 (3) The imposition of civil penalties under this section does not prohibit criminal
446 prosecution by a governmental entity for criminal violations of this chapter.

447 (4) Intentional, willful, knowing, or reckless violations of this chapter by any pawn or
448 secondhand business regulated by the chapter, or any employee of the business, are punishable
449 as a class B misdemeanor unless otherwise provided.

450 Section 10. Section **13-32a-110.5** is enacted to read:

451 **13-32a-110.5. Transactions with certain persons prohibited.**

452 A pawn or secondhand business may not purchase, accept as a pawn, or take for
453 consignment any property from a person who:

454 (1) is younger than 18 years of age; or

455 (2) appears to be acting under the influence of alcohol or any controlled substance.

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

457 **13-32a-111. Fees to fund training and central database.**

458 (1) (a) (i) On and after January 1, 2005, each pawnshop or secondhand merchandise
459 dealer in operation shall annually pay \$250 to the division, to be deposited in the account.

460 (ii) On and after January 1, 2013, each pawnshop or secondhand merchandise dealer in
461 operation shall annually pay \$300 to the division, to be deposited in the account.

462 (b) For the period of July 1, 2009 through December 31, 2009, each coin dealer in
463 operation shall pay a fee of \$250 to the division to be deposited in the account.

464 (c) (i) On and after January 1, 2010, each coin dealer in operation shall annually on
465 January 1 pay \$250 to the division to be deposited in the account.

466 (ii) On and after January 1, 2013, each coin dealer in operation shall annually on
467 January 1 pay \$300 to the division to be deposited in the account.

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

472 (b) On and after January 1, 2013, each law enforcement agency that participates in the
473 use of the database shall annually pay to the division a fee of \$3 per sworn law enforcement
474 officer who is employed by the agency as of January 1 of that year. The fee shall be deposited
475 in the account.

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

478 (4) (a) (i) If a law enforcement agency outside Utah requests access to the central
479 database, the requesting agency shall pay a yearly fee of \$750 for the fiscal year beginning July
480 1, 2006, which shall be deposited in the account.

481 (ii) If a law enforcement agency outside Utah requests access to the central database,
482 the requesting agency shall pay a yearly fee of \$900 for the fiscal year beginning July 1, 2013,
483 which shall be deposited in the account.

484 (b) The board may establish the fee amount for fiscal years beginning on and after July
485 1, 2007 under Section 63J-1-504.

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

487 **13-32a-112. Secondhand Merchandise Advisory Board -- Membership -- Duties --**
488 **Providing training -- Records of compliance -- Training compliance -- Rulemaking.**

489 (1) There is created within the division the Secondhand Merchandise Advisory Board.
490 The board consists of [++] 13 voting members and one nonvoting member:

- 491 (a) one representative of the Utah Chiefs of Police Association;
- 492 (b) one representative of the Utah Sheriffs Association;
- 493 (c) one representative of the Statewide Association of Prosecutors;
- 494 (d) one representative of the Utah Municipal Prosecutors' Association;
- 495 [~~(d)~~] (e) three representatives from the pawnshop industry, [~~two~~] three representatives
- 496 from the secondhand merchandise business industry, and one representative from the coin
- 497 dealer industry who are all appointed by the director of the Utah Commission on Criminal and
- 498 Juvenile Justice and who represent three separate pawnshops, [~~two~~] three separate secondhand
- 499 merchandise dealers, and one coin dealer, each of which are owned by a separate person or
- 500 entity;
- 501 [~~(e)~~] (f) one law enforcement officer who is appointed by the board members under
- 502 Subsections (1)(a) through [~~(d)~~] (e);
- 503 [~~(f)~~] (g) one law enforcement officer whose work regularly involves pawn and
- 504 secondhand businesses and who is appointed by the board members under Subsections (1)(a)
- 505 through [~~(d)~~] (e); [~~and~~]
- 506 [~~(g)~~] (h) one representative from the central database, who is nonvoting.
- 507 (2) (a) The board shall elect one voting member as the chair of the board by a majority
- 508 of the members present at the board's first meeting each year.
- 509 (b) The chair shall preside over the board for a period of one year.
- 510 (c) The advisory board shall meet quarterly upon the call of the chair.
- 511 (d) A quorum of nine members is required for the board to take action.
- 512 (3) (a) The board shall conduct quarterly training sessions regarding compliance with
- 513 this chapter and other applicable state laws for any person who owns or is employed by a pawn
- 514 or secondhand business subject to this chapter.
- 515 (b) Each training session shall provide no fewer than two hours of training.
- 516 (4) (a) Each pawn, secondhand, and coin dealer business in operation as of January 1
- 517 shall ensure one or more persons employed by the pawn or secondhand business each
- 518 participate in no fewer than two hours of compliance training within that year.
- 519 (b) This requirement does not limit the number of employees, directors, or officers of a
- 520 pawn or secondhand business who attend the compliance training.
- 521 (5) The board shall monitor and keep a record of the hours of compliance training

522 accrued by each pawn or secondhand business.

523 (6) The board shall provide each pawn or secondhand business with a certificate of
524 compliance upon completion by an employee of the two hours of compliance training under
525 Subsection (4).

526 (7) (a) Each law enforcement agency that has a pawn or secondhand business located
527 within its jurisdiction shall ensure that at least one of its officers completes two hours of
528 compliance training yearly.

529 (b) Subsection (7)(a) does not limit the number of law enforcement officers who attend
530 the compliance training.

531 (8) The board may propose to the division administrative rules establishing:

532 (a) pawn and secondhand business industry standards for best practices;

533 (b) standardized property descriptions for the database created under this chapter; and

534 (c) a roster of software programs for pawn and secondhand businesses setting out
535 minimum basic requirements for functionality.

536 (9) Pawn and secondhand businesses may file with the board complaints regarding law
537 enforcement agency practices perceived to be inconsistent with this chapter. The board may
538 refer the complaints to the Peace Officers Standards and Training Division.

539 Section 13. Section **13-32a-112.5** is amended to read:

540 **13-32a-112.5. Division may exempt certain businesses by rule.**

541 (1) (a) The division may exempt specific classes of businesses from regulation under
542 this chapter by rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

543 (b) The division shall consult with the board in determining which classes of
544 businesses to exempt under this section.

545 (2) Businesses the division may exempt are classes of commercial enterprises clearly
546 defined by administrative rule and that do not involve transactions in property that is
547 recognized by law enforcement as regularly subject to theft and subsequent efforts to pawn or
548 sell.

549 (3) Municipal and county criminal and civil enforcement regarding the provisions of
550 this chapter may not be imposed on businesses exempted under this section.

551 (4) Any pawn or secondhand business not exempted by this section and that operates
552 on a temporary basis or from a location that is not a permanent retail location:

553 (a) shall comply with the provisions of this chapter; and

554 (b) is subject to enforcement of the provisions of this chapter.

555 Section 14. Section **13-32a-115** is enacted to read:

556 **13-32a-115. Investigation phase and victim's responsibilities.**

557 (1) If the property pawned or sold to a pawn or secondhand business is the subject of a
558 criminal investigation and a hold has been placed on the property under Section 13-32a-109,
559 the original victim shall do the following to establish a claim:

560 (a) positively identify to law enforcement the item stolen or lost;

561 (b) if a police report has not already been filed for the original theft or loss of property,
562 file a police report, and provide for the law enforcement agency information surrounding the
563 original theft or loss of property; and

564 (c) give a sworn statement under penalty of law that:

565 (i) claims ownership of the property;

566 (ii) references the original theft or loss; and

567 (iii) identifies the perpetrator if known.

568 (2) The pawn or secondhand business shall retain possession of any property subject to
569 a hold until a criminal prosecution is commenced relating to the property for which the hold
570 was placed unless:

571 (a) during the course of a criminal investigation the actual physical possession by law
572 enforcement of an article purchased or pawned is essential for the purpose of fingerprinting the
573 property, chemical testing of the property, or if the property contains unique or sensitive
574 personal identifying information; or

575 (b) an agreement between the original victim and the pawn or secondhand business to
576 return the property is reached.

577 (3) (a) Upon the commencement of a criminal prosecution, any article subject to a hold
578 for investigation under this chapter may be seized by the law enforcement agency which
579 requested the hold.

580 (b) Subsequent disposition of the property shall be consistent with Section 77-24-2
581 regarding property not needed as evidence and this chapter.

582 (c) If a conflict exists between the provisions of Section 77-24-2 regarding property not
583 needed as evidence and this chapter, this chapter takes precedence regarding property held by

584 pawn or secondhand businesses.

585 (4) At all times during the course of a criminal investigation and subsequent
586 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or
587 secondhand business subject to the hold unless a pawned or sold article has been seized by the
588 law enforcement agency pursuant to Section 13-32a-109.5.

589 Section 15. Section **13-32a-116** is enacted to read:

590 **13-32a-116. Property disposition -- Property subject to prosecution.**

591 (1) When any property that is pawned or sold to a pawn or secondhand business, is the
592 subject of a criminal proceeding, and has been seized by law enforcement pursuant to Section
593 13-32a-115, the prosecuting agency shall notify the seizing agency, the original victim, and the
594 pawn or secondhand business if it determines the article is no longer needed as evidence
595 pending resolution of the criminal case.

596 (2) (a) If the property is no longer needed as evidence, the original victim and the pawn
597 or secondhand business from which the property was seized may choose to resolve the matter
598 pursuant to Subsection 13-32a-115(2)(b) within 10 days of notice being given that the property
599 is no longer needed.

600 (b) The original victim shall notify the seizing law enforcement agency and the pawn
601 or secondhand business of any agreed upon resolution and the seizing agency shall act
602 accordingly.

603 (3) (a) If the original victim and the pawn or secondhand business from which the
604 property was seized do not resolve the matter within the 10 days under Subsection (2), the
605 original victim or the pawn or secondhand business shall notify the prosecuting agency or law
606 enforcement agency in possession of the property that the disputed claim has not been resolved.

607 (b) (i) Upon receipt of written notice from the pawn or secondhand business or the
608 original victim that the parties are unable to resolve the disposition of the property as provided,
609 the prosecuting agency shall submit a motion to the court to schedule a property disposition
610 hearing within 45 days after receipt of the notice.

611 (ii) The prosecuting agency shall provide notice of the hearing to the pawn or
612 secondhand business, the original victim, and any named defendant in the pending criminal
613 case to the last known address or to counsel of record.

614 (iii) Notice shall be by certified mail or registered mail. Another form of notice may be

615 used if agreed upon by the parties.

616 (c) The hearing under Subsection (3)(b) may be combined with a preliminary
617 examination or other hearing, in the court's discretion.

618 (4) At the seized property disposition hearing the court shall take into consideration:

619 (a) the evidentiary value of the property and the need for its use at trial;

620 (b) whether alternative evidence, such as photographs, records, or serial numbers,
621 make retention of the property unnecessary;

622 (c) the proof of ownership of the property and compliance with Subsection
623 13-32a-115(1) by the original victim;

624 (d) whether retention of the property would create any undue hardship to the original
625 victim; and

626 (e) compliance by the pawn or secondhand business with the requirements of this
627 chapter, and potential financial loss to the business if the property were returned to the original
628 victim.

629 (5) Upon conclusion of the property disposition hearing the court may:

630 (a) order the return of the evidence to the original victim or to the pawn or secondhand
631 business as it determines appropriate; and

632 (b) make an initial finding of restitution for the original victim or the pawn or
633 secondhand business pending resolution of the criminal case.

634 (6) The court's determination of possession or restitution is a continuing order subject
635 to change or modification until the final resolution of the case.

636 Section 16. Section **13-32a-117** is enacted to read:

637 **13-32a-117. Property disposition if no criminal charges filed -- Administrative**
638 **hearing.**

639 (1) The original victim or the pawn or secondhand business may request an
640 administrative property disposition hearing with the Division of Consumer Protection if:

641 (a) more than 30 days have passed since:

642 (i) the law enforcement agency placed hold on the property; or

643 (ii) the property was seized by the law enforcement agency; and

644 (b) an agreement pursuant to Section 13-32a-115(2)(b) has not been reached.

645 (2) The original victim shall provide to the Division of Consumer Protection at the

646 hearing under this section a copy of the sworn statement taken pursuant to Section 13-32a-115
647 and the case number assigned by the law enforcement agency.

648 (3) (a) The Division of Consumer Protection shall notify the law enforcement agency
649 in writing of the request for a property disposition hearing.

650 (b) The law enforcement agency shall forward the notice to the prosecution agency
651 having jurisdiction over the case involving the property.

652 (c) (i) The prosecution agency shall, within five business days of receiving the notice,
653 make an initial determination pursuant to Section 77-24-2 and this chapter of whether
654 continued hold or seizure regarding the property as evidence in a criminal trial is necessary.

655 (ii) If the prosecuting agency determines the property is no longer needed as evidence,
656 the law enforcement agency shall notify in writing the pawn or secondhand business and the
657 original victim of the prosecuting agency's determination as soon as reasonably possible.

658 (4) (a) Within 30 days after receiving the request and notification from law
659 enforcement that the property is not needed as evidence pursuant to Section 77-24-2 and this
660 chapter, the Division of Consumer Protection shall schedule an adjudicative hearing in
661 accordance with Title 63G, Chapter 4, Administrative Procedures Act, to determine ownership
662 of the claimed property. The division shall provide written notice of the hearing to the pawn or
663 secondhand business and the original victim.

664 (b) The division shall conduct the hearing to determine disposition of the claimed
665 seized property, taking into consideration:

666 (i) the proof of ownership of the property and compliance with Subsection
667 13-32a-115(1) by the original victim;

668 (ii) the claim of ownership by the pawn or secondhand business, the potential financial
669 loss to the business; and

670 (iii) compliance by the pawn or secondhand business with the requirements of this
671 chapter.

672 (c) If the division determines that the property should be released to the pawn or
673 secondhand business, the original victim retains a right of first refusal over the property for 15
674 days and may purchase the property at the amount financed or paid by the pawn or secondhand
675 business.

676 (d) The party to whom the division determines the property is to be released shall

677 maintain possession of the property for the duration of any time period regarding any
678 applicable right of appeal.

679 Section 17. Section **77-24-2** is amended to read:

680 **77-24-2. Property not needed as evidence -- Return procedure.**

681 (1) Property which is not needed as evidence shall be returned to the owner, if the
682 owner may lawfully possess it, or disposed of in accordance with this chapter.

683 (2) (a) When the peace officer or the officer's employing agency becomes aware that
684 the property is not needed as evidence, the officer or the agency shall inform the prosecuting
685 attorney that the property is not needed and provide a description and details of ownership.

686 (b) When the prosecuting attorney is informed or otherwise becomes aware that the
687 property is not needed as evidence, the [~~prosecutor~~] prosecuting attorney shall authorize release
688 of the property to the owner.

689 (c) When the peace officer or the officer's employing agency becomes aware that any
690 property is to be returned to its owner, the officer or employing agency shall exercise due
691 diligence in attempting to notify the rightful owner that the property is to be returned.

692 (d) If the property is a weapon, the peace officer shall dispose of it in accordance with
693 Section 76-10-525.

694 (e) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the
695 evidence custodian, the custodian shall release the property to the owner.

696 (ii) If the evidence custodian is unable to locate an owner of the property or if the
697 owner is not entitled to lawfully possess the property, the agency having custody of the
698 property shall dispose of the property in accordance with Section 77-24-4.

699 (3) (a) When property is received in evidence, the clerk of the court last receiving it
700 shall retain the property or the clerk shall return the property to the custody of the peace officer.
701 The property shall be retained by the clerk or the officer until all direct appeals and retrials are
702 final, at which time the property shall be returned to the owner in accordance with this chapter.
703 If the property was seized for forfeiture, it shall be held and disposed of as provided in Title 24,
704 Chapter 1, Utah Uniform Forfeiture Procedures Act.

705 (b) If the prosecuting attorney considers it necessary to retain control over the
706 evidence, in anticipation of possible collateral attacks upon the judgment or for use in a
707 potential prosecution, [~~he~~] the prosecuting attorney may decline to authorize return of the

708 property to the owner.

709 (4) If a conflict exists between the provisions of this section and Title 13, Chapter 32a,

710 Pawnshop and Secondhand Merchandise Transaction Information Act, Title 13, Chapter 32a

711 governs regarding disposition of property held by a pawn or secondhand business in the course

712 of its business.

713 Section 18. **Repealer.**

714 This bill repeals:

715 Section **13-32a-109.8, Pawned or sold property subject to law enforcement**

716 **investigation.**