

SB0162S01 compared with SB0162

~~{deleted text}~~ shows text that was in SB0162 but was deleted in SB0162S01.

inserted text shows text that was not in SB0162 but was inserted into SB0162S01.

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Senator Daniel W. Thatcher proposes the following substitute bill:

SECONDHAND SALES AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: ~~{~~ Lee B. Perry

LONG TITLE

General Description:

This bill modifies the Pawnshop and Secondhand Merchandise Transaction Information Act.

Highlighted Provisions:

This bill:

- ▶ provides an exemption to the 15-day holding period for ~~{secondhand merchandise that is valued less than \$50 and that does}~~ retail media items that are the subject of a store credit transaction and that do not contain:
 - a serial number or other identifiable marks; or ~~{~~
 - any identifiable marks that appear to have been intentionally defaced.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-32a-102, as last amended by Laws of Utah 2013, Chapters 124 and 187

13-32a-109, as last amended by Laws of Utah 2013, Chapter 124

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

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

13-32a-102. Definitions.

As used in this chapter:

- (1) "Account" means the Pawnbroker and Secondhand Merchandise Operations Restricted Account created in Section 13-32a-113.
- (2) "Antique item" means an item:
 - (a) that is generally older than 25 years;
 - (b) whose value is based on age, rarity, condition, craftsmanship, or collectability;
 - (c) that is furniture or other decorative objects produced in a previous time period, as distinguished from new items of a similar nature; and
 - (d) obtained from auctions, estate sales, other antique shops, and individuals.
- (3) "Antique shop" means a business operating at an established location and that offers for sale antique items.
- (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board created by this chapter.
- (5) "Central database" or "database" means the electronic database created and operated under Section 13-32a-105.
- (6) "Coin" means a piece of currency, usually metallic and usually in the shape of a disc that is:
 - (a) stamped metal, and issued by a government as monetary currency; or
 - (b) (i) worth more than its current value as currency; and
 - (ii) worth more than its metal content value.
- (7) "Coin dealer" means a person or business whose sole business activity is the selling

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and purchasing of coins and precious metals.

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

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

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

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

(10) "Identification" means a valid U.S. federal or state-issued photo ID, including a U.S. passport, a U.S. passport card, a U.S. military ID, and a driver license.

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

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

(13) "Original victim" means a victim who is not a party to the pawn or sale transaction and includes:

(a) an authorized representative designated in writing by the original victim; and

(b) an insurer who has indemnified the original victim for the loss of the described property.

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) "Retail media item" means recorded music, a movie, or a video game that is produced and distributed in hard copy format for retail sale.

~~[(22)]~~ (23) "Scrap jewelry" means any item purchased solely:

- (a) for its gold, silver, or platinum content; and
- (b) for the purpose of reuse of the metal content.

~~[(23)]~~ (24) (a) "Secondhand merchandise dealer" means an owner or operator of a business that:

- (i) deals in the purchase, exchange, or sale of used or secondhand merchandise or personal property; and
- (ii) does not function as a pawnbroker.
- (b) "Secondhand merchandise dealer" does not include:
 - (i) the owner or operator of an antique shop;
 - (ii) any class of businesses exempt by administrative rule under Section 13-32a-112.5;
 - (iii) any person or entity who operates auction houses, flea markets, or vehicle, vessel, and outboard motor dealers as defined in Section 41-1a-102;
- (iv) the sale of secondhand goods at events commonly known as "garage sales," "yard sales," or "estate sales";

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- (v) the sale or receipt of secondhand books, magazines, or post cards;
- (vi) the sale or receipt of used merchandise donated to recognized nonprofit, religious, or charitable organizations or any school-sponsored association, and for which no compensation is paid;
- (vii) the sale or receipt of secondhand clothing and shoes;
- (viii) any person offering his own personal property for sale, purchase, consignment, or trade via the Internet;
- (ix) any person or entity offering the personal property of others for sale, purchase, consignment, or trade via the Internet, when that person or entity does not have, and is not required to have, a local business or occupational license or other authorization for this activity;
- (x) any owner or operator of a retail business that receives used merchandise as a trade-in for similar new merchandise;
- (xi) an owner or operator of a business that contracts with other persons or entities to offer those persons' secondhand goods for sale, purchase, consignment, or trade via the Internet;
- (xii) any dealer as defined in Section 76-6-1402, which concerns scrap metal and secondary metals; or
- (xiii) the purchase of items in bulk that are:
 - (A) sold at wholesale in bulk packaging;
 - (B) sold by a person licensed to conduct business in Utah; and
 - (C) regularly sold in bulk quantities as a recognized form of sale.

(25) "Store credit transaction" means a consumer transaction with a retail establishment that involves a credit to the customer towards purchases with that retail establishment, excluding transferable gift cards.

Section ~~13-32a-109~~2. Section **13-32a-109** is amended to read:

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

- (1) (a) A pawnbroker may sell an article pawned to the pawnbroker if:
 - (i) 15 days have passed since the day on which the contract between the pawnbroker and the pledgor was executed;
 - (ii) the contract period between the pawnbroker and the pledgor has expired; and
 - (iii) the pawnbroker has complied with the requirements of Section 13-32a-106

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regarding reporting to the central database and Section 13-32a-103.

(b) If an article, including scrap jewelry, is purchased by a pawn or secondhand business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article after the pawn or secondhand business or coin dealer has held the article for 15 days and complied with the requirements of Section 13-32a-106 regarding reporting to the central database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are not required to hold:

(i) precious metals or coins under this Subsection (1)(b)[-]; or

(ii) ~~any~~ a retail media item ~~valued at less than \$50~~ that is the subject of a store credit transaction and that does not include:

(A) a serial number or other identifying numbers or marks; or

(B) a serial number or other identifying numbers or marks that appear to be intentionally defaced.

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

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

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

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

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

(a) states the active case number;

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

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

(3) If an article is not seized by a law enforcement agency that has placed a hold on the

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property, the property shall remain in the custody of the pawn or secondhand business until further disposition by the law enforcement agency, and as consistent with this chapter.

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

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

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

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

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

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

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

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

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

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

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

(b) providing written notice to the pawn or secondhand business that a court order has

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continued the period of time for which the item shall be held.

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

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

(b) delivered to the pawn or secondhand business by registered or certified mail; or

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

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

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

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Legislative Review Note

~~as of 1-20-14 12:15 PM~~

~~Office of Legislative Research and General Counsel~~