

PAWNSHOP AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill modifies Title 13, Commerce and Trade, regarding pawn and secondhand businesses.

Highlighted Provisions:

This bill:

- ▶ defines a retail media item and provides that these items are not subject to secondhand business provisions;
- ▶ modifies provisions regarding the disposition of property, including:
 - notice from law enforcement to the pawn or secondhand business; and
 - the return of an item to the original victim after it has been held or seized;
- ▶ modifies the procedure for the disposition of an item no longer needed for investigation or prosecution, including the procedure for pawn or secondhand businesses to contest the disposition; and
- ▶ modifies provisions regarding the Secondhand Merchandise Advisory Board, including recommendations and appointment of members.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[13-32a-102](#), as last amended by Laws of Utah 2013, Chapters 124 and 187

- 30 **13-32a-109**, as last amended by Laws of Utah 2013, Chapter 124
- 31 **13-32a-109.5**, as last amended by Laws of Utah 2012, Chapter 284
- 32 **13-32a-112**, as last amended by Laws of Utah 2012, Chapter 284
- 33 **13-32a-115**, as last amended by Laws of Utah 2014, Chapters 144 and 189
- 34 **13-32a-116**, as enacted by Laws of Utah 2012, Chapter 284

35 ENACTS:

36 **13-32a-116.5**, Utah Code Annotated 1953



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

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

40 **13-32a-102. Definitions.**

41 As used in this chapter:

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

43 Restricted Account created in Section **13-32a-113**.

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

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

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

47 (c) that is furniture or other decorative objects produced in a previous time period, as
48 distinguished from new items of a similar nature; and

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

50 (3) "Antique shop" means a business operating at an established location and that
51 offers for sale antique items.

52 (4) "Board" means the [~~Pawnshop and~~] Secondhand Merchandise Advisory Board
53 created by this chapter.

54 (5) "Central database" or "database" means the electronic database created and
55 operated under Section **13-32a-105**.

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

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

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

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

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

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

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

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

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

71 (10) "Identification" means a valid [U.S.] United States federal or state-issued photo
72 [ID] personal identification, including a [U.S.] United States passport, a [U.S.] United States
73 passport card, [a] U.S. military [ID] personal identification, and a driver license.

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

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

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

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

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

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

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

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

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

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

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

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

96 [~~(18)~~] (16) "Pawnshop" means the physical location or premises where a pawnbroker
97 conducts business.

98 [~~(16)~~] (17) "Pawn ticket" means a document upon which information regarding a pawn
99 transaction is entered when the pawn transaction is made.

100 [~~(17)~~] (18) "Pawn transaction" means an extension of credit in which an individual
101 delivers property to a pawnbroker for an advance of money and retains the right to redeem the
102 property for the redemption price within a fixed period of time.

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

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

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

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

110 [~~(22)~~] (23) "Scrap jewelry" means any item purchased solely:

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

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

113 [~~(23)~~] (24) (a) "Secondhand merchandise dealer" means an owner or operator of a

114 business that:

115 (i) deals in the purchase, exchange, or sale of used or secondhand merchandise or

116 personal property; and

117 (ii) does not function as a pawnbroker.

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

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

120 (ii) any class of businesses exempt by administrative rule under Section 13-32a-112.5;

121 (iii) any person or entity who operates auction houses, flea markets, or vehicle, vessel,

122 and outboard motor dealers as defined in Section 41-1a-102;

123 (iv) the sale of secondhand goods at events commonly known as "garage sales," "yard

124 sales," or "estate sales";

125 (v) the sale or receipt of secondhand books, magazines, or post cards;

126 (vi) the sale or receipt of used merchandise donated to recognized nonprofit, religious,

127 or charitable organizations or any school-sponsored association, and for which no

128 compensation is paid;

129 (vii) the sale or receipt of secondhand clothing and shoes;

130 (viii) any person offering his own personal property for sale, purchase, consignment, or

131 trade via the Internet;

132 (ix) any person or entity offering the personal property of others for sale, purchase,

133 consignment, or trade via the Internet, when that person or entity does not have, and is not

134 required to have, a local business or occupational license or other authorization for this activity;

135 (x) any owner or operator of a retail business that:

136 (A) receives used merchandise as a trade-in for similar new merchandise; or

137 (B) receives used retail media items as a trade-in for similar new or used retail media

138 items;

139 (xi) an owner or operator of a business that contracts with other persons or entities to

140 offer those persons' secondhand goods for sale, purchase, consignment, or trade via the

141 Internet;

142 (xii) any dealer as defined in Section 76-6-1402, which concerns scrap metal and
143 secondary metals; or

144 (xiii) the purchase of items in bulk that are:

145 (A) sold at wholesale in bulk packaging;

146 (B) sold by a person licensed to conduct business in Utah; and

147 (C) regularly sold in bulk quantities as a recognized form of sale.

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

149 **13-32a-109. Holding period for articles -- Return of articles -- Penalty.**

150 (1) (a) A pawnbroker may sell an article pawned to the pawnbroker if:

151 (i) 15 days have passed since the day on which the contract between the pawnbroker
152 and the pledgor was executed;

153 (ii) the contract period between the pawnbroker and the pledgor has expired; and

154 (iii) the pawnbroker has complied with the requirements of Section 13-32a-106
155 regarding reporting to the central database and Section 13-32a-103.

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

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

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

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

169 (d) If the law enforcement agency requesting a hold on property under this Subsection

170 (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify
171 the local law enforcement agency of the request and also the pawn or secondhand business.

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

175 (a) states the active case number;

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

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

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

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

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

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

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

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

195 (7) When the purpose for the hold on or seizure of an article for which an original
196 victim who has complied with Section 13-32a-115 has not been identified is terminated, the
197 law enforcement agency requiring the hold or seizure shall within 15 days after the termination:

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

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

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

204 (8) (a) When the purpose for the hold on or seizure of an article, for which an original
205 victim who has complied with Section 13-32a-115 has been identified is terminated, the law
206 enforcement agency requiring the hold or seizure shall:

207 (i) document the original victim who has positively identified the item of property; and

208 (ii) provide the documented information concerning the original victim to the
209 prosecuting agency to determine whether continued possession of the article is necessary for
210 purposes of prosecution, as provided in Section 24-3-103.

211 (b) If the prosecuting agency determines that continued possession of the article is not
212 necessary for purposes of prosecution, as provided in Section 24-3-103, the prosecuting agency
213 shall provide a written or electronic notification to the law enforcement agency which
214 authorizes the return of the article to an original victim who has complied with Section
215 13-32a-115.

216 (c) (i) A law enforcement agency shall promptly provide notice to the pawn or
217 secondhand business of the authorized return of the article under this Subsection (8).

218 (ii) The notice shall identify the original victim, advise the pawn or secondhand
219 business that the original victim has identified the article, and direct the pawn or secondhand
220 business to release the article to the original victim at no cost to the original victim, or if the
221 article was seized, the notice shall advise that the article will be returned to the original victim
222 within 15 days, except as provided under Subsection (8)(d).

223 (d) The pawn or secondhand business shall release an article under Subsection (8)(c)
224 unless within 15 days of receiving the notice the pawn or secondhand business complies with
225 Section 13-32a-116.5.

226 ~~[(8)]~~ (9) If the law enforcement agency does not notify the pawn or secondhand
227 business that a hold on an item has expired, the pawn or secondhand business shall send a letter
228 by registered or certified mail to the law enforcement agency that ordered the hold and inform
229 the agency that the holding period has expired. The law enforcement agency shall respond
230 within 30 days by:

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

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

235 ~~[(9)]~~ (10) The written notice under Subsection ~~[(8)]~~ (9)(b) is considered provided
236 when:

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

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

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

242 ~~[(10)]~~ (11) If the law enforcement agency does not respond within 30 days under
243 Subsection ~~[(8)]~~ (9), the pawn or secondhand business may manage the item as if acquired in
244 the ordinary course of business.

245 ~~[(11)]~~ (12) A violation of this section is a class B misdemeanor and is also subject to
246 civil penalties under Section [13-32a-110](#).

247 Section 3. Section **13-32a-109.5** is amended to read:

248 **13-32a-109.5. Seizure of property -- Notification to pawn or secondhand business.**

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

253 ~~[(a)]~~ (1) notify the pawnshop of the specific item to be seized; and

254 ~~[(b)]~~ (2) issue to the pawnshop a seizure ticket in a form approved by the division and
255 that:

256 ~~[(i)]~~ (a) provides the active case number related to the item to be seized;

257 ~~[(ii)]~~ (b) provides the date of the seizure request;

258 ~~[(iii)]~~ (c) provides the reason for the seizure;

259 ~~[(iv)]~~ (d) describes the article to be seized;

260 ~~[(v)]~~ (e) states each reason the article is necessary during the course of a criminal
261 investigation; and

262 ~~[(vi)]~~ (f) includes any information that facilitates the pawnbroker's ability to track the
263 article when the prosecution agency takes over the case.

264 ~~[(2) If the purpose for the seizure of an article under this section is terminated before
265 final disposition of the criminal case and the property is no longer needed as evidence, the law
266 enforcement agency that required the seizure shall within 15 days after the property is no
267 longer needed as evidence:]~~

268 ~~[(a) notify the pawn or secondhand business in writing that the purpose for the seizure
269 has been terminated and the property is available for return to the pawn or secondhand
270 business; or]~~

271 ~~[(b) return the article to the pawn or secondhand business:]~~

272 ~~[(3) If the law enforcement agency seizing the pawned or sold property is not the local
273 law enforcement agency, the seizing agency shall, in addition to compliance with Subsection
274 (1):]~~

275 ~~[(a) notify the local law enforcement agency prior to any seizure; and]~~

276 ~~[(b) facilitate the seizure of the pawned property in cooperation with the local law
277 enforcement agency to provide the pawnshop or secondhand business the ability to monitor the
278 proceedings:]~~

279 Section 4. Section 13-32a-112 is amended to read:

280 **13-32a-112. Secondhand Merchandise Advisory Board -- Membership --**
281 **Quorum.**

282 (1) There is created within the division the Secondhand Merchandise Advisory Board.

283 The board consists of 13 voting members and one nonvoting member:

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

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

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

287 (d) one representative of the Utah Municipal Prosecutors' Association;

288 (e) three representatives from the pawnshop industry~~[-];~~

289 ~~(f) three representatives from the secondhand merchandise business industry[-, and];~~

290 ~~(g) one representative from the coin dealer industry [who are all appointed by the~~
291 ~~director of the Utah Commission on Criminal and Juvenile Justice and who represent three~~
292 ~~separate pawnshops, three separate secondhand merchandise dealers, and one coin dealer, each~~
293 ~~of which are owned by a separate person or entity];~~

294 ~~(f)~~ (h) one law enforcement officer who is appointed by the board members under
295 Subsections (1)(a) through ~~(e)~~ (g);

296 ~~(g)~~ (i) one law enforcement officer whose work regularly involves pawn and
297 secondhand businesses and who is appointed by the board members under Subsections (1)(a)
298 through ~~(e)~~ (g); and

299 ~~(h)~~ (j) one representative from the central database, who is nonvoting.

300 (2) (a) The board shall prepare recommendations for the appointment of members
301 under Subsections (1)(a) through (g), and Subsection (1)(j), and shall forward its
302 recommendations to the Commission on Criminal and Juvenile Justice, which shall make the
303 appointments.

304 (b) The members under Subsections (1)(e), (f), and (g) shall represent three separate
305 pawnshops, three separate secondhand merchandise dealers, and one coin dealer, each of which
306 are owned by a separate person or entity.

307 (c) In appointing members from the individuals recommended under Subsection (2)(a),
308 the Commission on Criminal and Juvenile Justice shall give consideration to recommendations
309 by members of the respective occupations and professions and by their representative

310 organizations.

311 (3) (a) Each member of the board shall be appointed to a term of not more than four
312 years, and may be reappointed upon expiration of the member's term.

313 (b) Notwithstanding the requirements of Subsection (3)(a), the Commission on
314 Criminal and Juvenile Justice shall, at the time of appointments or reappointments, adjust the
315 length of terms to ensure that the terms of board members are staggered so that approximately
316 half of the board is appointed every two years.

317 ~~[(2)]~~ (4) (a) The board shall elect one voting member as the chair of the board by a
318 majority of the members present at the board's first meeting each year.

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

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

321 (d) A quorum of nine members is required for the board to take action.

322 ~~[(3)]~~ (5) (a) The board shall conduct quarterly training sessions regarding compliance
323 with this chapter and other applicable state laws for any person who owns or is employed by a
324 pawn or secondhand business subject to this chapter.

325 (b) Each training session shall provide no fewer than two hours of training.

326 ~~[(4)]~~ (6) (a) Each pawn, secondhand, and coin dealer business in operation as of
327 January 1 shall ensure one or more persons employed by the pawn or secondhand business each
328 participate in no fewer than two hours of compliance training within that year.

329 (b) This requirement does not limit the number of employees, directors, or officers of a
330 pawn or secondhand business who attend the compliance training.

331 ~~[(5)]~~ (7) The board shall monitor and keep a record of the hours of compliance training
332 accrued by each pawn or secondhand business.

333 ~~[(6)]~~ (8) The board shall provide each pawn or secondhand business with a certificate
334 of compliance upon completion by an employee of the two hours of compliance training under
335 Subsection ~~[(4)]~~ (6).

336 ~~[(7)]~~ (9) (a) Each law enforcement agency ~~[that has a pawn or secondhand business~~
337 ~~located within its jurisdiction]~~ shall ensure that at least one of its officers completes two hours

338 of compliance training yearly.

339 (b) Subsection ~~[(7)]~~ (9)(a) does not limit the number of law enforcement officers who
340 attend the compliance training.

341 ~~[(8)]~~ (10) The board may propose to the division administrative rules establishing:

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

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

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

346 ~~[(9)]~~ (11) Pawn and secondhand businesses may file with the board complaints
347 regarding law enforcement agency practices perceived to be inconsistent with this chapter. The
348 board may refer the complaints to the Peace Officers Standards and Training Division.

349 Section 5. Section **13-32a-115** is amended to read:

350 **13-32a-115. Criminal investigation -- Prosecution -- Property disposition.**

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

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

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

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

359 (i) claims ownership of the property;

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

361 (iii) identifies the perpetrator if known.

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

365 (a) during the course of a criminal investigation the actual physical possession by law

366 enforcement of an article purchased or pawned is essential for the purpose of fingerprinting the
367 property, chemical testing of the property, or if the property contains unique or sensitive
368 personal identifying information; or

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

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

374 (b) Subsequent disposition of the property shall be consistent with [~~Section 24-3-103~~
375 ~~regarding property not needed as evidence and~~] this chapter.

376 [~~(c) If a conflict exists between the provisions of Section 24-3-103 regarding property~~
377 ~~not needed as evidence and this chapter, this chapter takes precedence regarding property held~~
378 ~~by pawn or secondhand businesses.~~]

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

383 Section 6. Section 13-32a-116 is amended to read:

384 **13-32a-116. Property disposition -- Property subject to prosecution -- Property**
385 **not used as evidence.**

386 [(H)] When any property that is pawned or sold to a pawn or secondhand business is the
387 subject of a criminal proceeding, and has been seized by law enforcement pursuant to Section
388 13-32a-115, the prosecuting agency shall notify the seizing agency, the original victim, and the
389 pawn or secondhand business [~~if it~~] in compliance with Subsection 13-32a-109(8), if the
390 prosecuting agency determines the article is no longer needed as evidence pending resolution of
391 the criminal case.

392 [(2) (a) ~~If the property is no longer needed as evidence, the original victim and the~~
393 ~~[pawn or secondhand business from which the property was seized may choose to resolve the~~

394 matter pursuant to Subsection ~~13-32a-115~~(2)(b) within 10 days of notice being given that the
395 property is no longer needed.]

396 [(b) The original victim shall notify the seizing law enforcement agency and the pawn
397 or secondhand business of any agreed upon resolution and the seizing agency shall act
398 accordingly.]

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

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

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

411 [(iii) Notice shall be by certified mail or registered mail. Another form of notice may
412 be used if agreed upon by the parties.]

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

415 [(4) At the seized property disposition hearing the court shall take into consideration:]

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

417 [(b) whether alternative evidence, such as photographs, records, or serial numbers,
418 make retention of the property unnecessary;]

419 [(c) the proof of ownership of the property and compliance with Subsection
420 ~~13-32a-115~~(1) by the original victim;]

421 [(d) whether retention of the property would create any undue hardship to the original

422 victim; and]

423 [~~(e) compliance by the pawn or secondhand business with the requirements of this~~
424 ~~chapter, and potential financial loss to the business if the property were returned to the original~~
425 ~~victim.]~~

426 [~~(5) Upon conclusion of the property disposition hearing the court may: (a) order the~~
427 ~~return of the evidence to the original victim or to the pawn or secondhand business as it~~
428 ~~determines appropriate; and (b) make an initial finding of restitution for the original victim or~~
429 ~~the pawn or secondhand business pending resolution of the criminal case.]~~

430 [~~(6) The court's determination of possession or restitution under Subsection (5) is a~~
431 ~~continuing order subject to change or modification until the final resolution of the case.]~~

432 Section 7. Section **13-32a-116.5** is enacted to read:

433 **13-32a-116.5. Contested disposition of articles - Procedure.**

434 (1) If a pawn or secondhand business has received notice from a law enforcement
435 agency under Section [13-32a-109](#) that an article which was the subject of a hold or seizure shall
436 be returned to an identified original victim, the pawn or secondhand business may contest the
437 determination and seek a specific alternative disposition if within 15 days:

438 (a) the pawn or secondhand business gives notice to the identified original victim, by
439 certified mail, that the pawn or secondhand business contests the determination to return the
440 article to the original victim; and

441 (b) files a petition to determine rightful ownership of the article as provided in Section
442 [24-3-104](#).

443 (2) A pawn or secondhand business is guilty of a class B misdemeanor if the pawn or
444 secondhand business:

445 (a) holds or sells an article in violation of a notification from a law enforcement agency
446 that the item is to be returned to an original victim; and

447 (b) the pawn or secondhand business does not comply with the requirements of this
448 section within the time periods specified.