

28 investigations in order to recover stolen property;

29 ▶ requires that the pawnbroker be given time to comply with upgrades to the central
30 database;

31 ▶ specifies the holding period for pawned articles and provides extensions for articles
32 held for law enforcement investigations;

33 ▶ imposes annual fees on pawnshops and participating law enforcement officers;

34 ▶ requires that pawnbrokers and law enforcement officers participate in annual
35 training;

36 ▶ provides that violations of specified sections of the chapter are class C
37 misdemeanors;

38 ▶ provides that this chapter preempts any local government ordinances regarding
39 pawnshop businesses if the ordinances are more restrictive than or not consistent

40 with this chapter;

41 ▶ provides that records provided to a law enforcement agency in compliance with this
42 chapter are protected records under the Government Records Access and

43 Management Act;

44 ▶ creates a Pawnshop Advisory Board within the Department of ~~§ [Financial Institutions]~~

44a **Commerce § ;**

45 ▶ establishes a restricted account for civil penalties and fees imposed under this
46 chapter and specifies uses of funds in the account, which includes training and the

47 costs of the central database;

48 ▶ amends the Criminal Code regarding the offense of receiving stolen property to
49 exempt dealers in property who receive it for less than reasonable value from the

50 presumption regarding possession of stolen property; and

51 ▶ amends the Criminal Code to delete the value limitation regarding pawnbrokers'
52 obligations to obtain information from individuals selling or delivering property to

53 them.

54 **Monies Appropriated in this Bill:**

55 None

56 **Other Special Clauses:**

57 This bill provides an effective date **§ AND A REPEAL DATE § .**

58 **Utah Code Sections Affected:**

59 AMENDS:

60 **63-2-304**, as last amended by Chapters 60 and 131, Laws of Utah 2003

61 **76-6-408**, as last amended by Chapter 102, Laws of Utah 1993

62 ENACTS:

63 **13-32a-101**, Utah Code Annotated 1953

64 **13-32a-102**, Utah Code Annotated 1953

65 **13-32a-103**, Utah Code Annotated 1953

66 **13-32a-104**, Utah Code Annotated 1953

67 **13-32a-105**, Utah Code Annotated 1953

68 **13-32a-106**, Utah Code Annotated 1953

69 **13-32a-107**, Utah Code Annotated 1953

70 **13-32a-108**, Utah Code Annotated 1953

71 **13-32a-109**, Utah Code Annotated 1953

72 **13-32a-110**, Utah Code Annotated 1953

73 **13-32a-111**, Utah Code Annotated 1953

74 **13-32a-112**, Utah Code Annotated 1953

75 **13-32a-113**, Utah Code Annotated 1953

76 **13-32a-114**, Utah Code Annotated 1953

77

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

79 Section 1. Section **13-32a-101** is enacted to read:

80 **CHAPTER 32a. PAWNSHOP TRANSACTION INFORMATION ACT**

81 **13-32a-101. Title.**

82 This chapter is known as the "Pawnshop Transaction Information Act."

83 Section 2. Section **13-32a-102** is enacted to read:

84 **13-32a-102. Definitions.**

85 As used in this chapter:

86 (1) "Account" means the Pawnbroker Operations Restricted Account created in Section

87 13-32a-113.

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

89 (3) "Central database" or "database" means the electronic database created and

90 operated under Section 13-32a-105.

91 (4) "Identification" means a form of positive identification issued by a governmental
92 entity that:

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

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

96 (5) "Local law enforcement agency" means a law enforcement agency that has
97 jurisdiction over the location where the pawnshop is located.

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

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

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

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

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

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

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

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

111 (10) "Pawn transaction" means an extension of credit in which an individual delivers
112 property to a pawnbroker for an advance of money or sells property to a pawnbroker and
113 retains the right to redeem or repurchase the property for the redemption price within a fixed
114 period of time.

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

117 (12) "Property" means any tangible personal property.

118 (13) "Register" means the record of information required under this chapter to be
119 maintained by the pawnbroker. The register is an electronic record that is in a format that is
120 compatible with the central database.

121 Section 3. Section **13-32a-103** is enacted to read:

122 **13-32a-103. Compliance with criminal code.**

123 Every pawnbroker shall, regarding each article of property a person pawns or sells,
124 comply with the requirements of Subsections 76-6-408(2)(c)(i) through (iii) regarding the
125 person's:

126 (1) legal right to the property;

127 (2) fingerprint; and

128 (3) picture identification.

129 Section 4. Section **13-32a-104** is enacted to read:

130 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
131 **items.**

132 (1) Every pawnbroker shall keep a register of pawn transactions, in which the
133 pawnbroker or his employee shall enter the following information regarding every article
134 pawned to him:

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

136 (b) the pawn transaction ticket number;

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

138 (d) the following information regarding the person who pawns the article:

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

140 (ii) ~~the~~ **THE NUMBER OF THE DRIVER LICENSE OR OTHER FORM OF POSITIVE**

140a **IDENTIFICATION PRESENTED BY THE PERSON, AND NOTATIONS OF DISCREPANCIES IF ~~the~~ the**

140b person's physical description, including gender, height, weight, race, age, hair

141 color, and eye color ~~the~~ **DOES NOT CORRESPOND WITH the** identification provided by the

141a person;

142 ~~the~~ **the number of the driver license or other form of positive identification presented**
143 **by the person; ~~the~~**

144 ~~the~~ **the** ~~(iii)~~ **the** person's signature; and

145 ~~the~~ **the** a legible fingerprint of the person's right thumb, or if the right thumb cannot be
146 fingerprinted, a legible fingerprint of the person with a written notation identifying the
147 fingerprint and the reason why the thumb print was unavailable;

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

149 (f) the identification of the pawnbroker or his employee, whoever is making the

150 register entry; and

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

152 marks such as:

153 (i) names, brand names, numbers, serial numbers, model numbers, color,

154 manufacturers' names, and size;

155 (ii) metallic composition, and any jewels, stones, or glass;

156 (iii) any other marks of identification or indicia of ownership on the article;

157 (iv) the weight of the article, if the payment is based on weight;

158 (v) any other unique identifying feature;

159 (vi) gold content, if indicated; and

160 (vii) if multiple articles of a similar nature are delivered together in one transaction and
 161 the articles do not bear serial or model numbers and do not include precious metals or
 162 gemstones, such as musical or video recordings, books, or hand tools, the description of the
 163 articles is adequate if it includes the quantity of the articles and a description of the type of
 164 articles delivered.

165 (2) A pawnshop may not accept any personal property if, upon inspection, it is apparent
 166 that serial numbers, model names, or identifying characteristics have been intentionally defaced
 167 on that article of property.

168 Section 5. Section **13-32a-105** is enacted to read:

169 **13-32a-105. Central database.**

170 (1) There is created under this section a central database as a statewide repository for
 171 all information pawnbrokers are required to submit in accordance with this chapter and for the
 172 use of all participating law enforcement agencies whose jurisdictions include one or more
 173 pawnshops.

174 (2) The Division of Purchasing and General Services created in Title 63A, Chapter 2,
 175 shall:

176 (a) meet with the board to determine the required elements of the database; and

177 (b) conduct a statewide request for proposal for the creation of and maintenance of the
 178 central database.

179 (3) Funding for the creation and operation of the central database shall be from the
 180 account.

180a **§ (4)(a) ANY ENTITY SUBMITTING A BID TO CREATE, MAINTAIN, AND OPERATE THE DATABASE**
 180b **PURSUANT TO THE REQUEST FOR PROPOSAL CONDUCTED BY THE DIVISION OF PURCHASING**
 180c **AND GENERAL SERVICES AIMAY NOT HOLD ANY FINANCIAL OR OPERATING INTEREST IN ANY**
 180d **PAWNSHOP IN ANY STATE.**

180e **(b) THE DIVISION OF PURCHASING AND GENERAL SERVICES, IN CONJUNCTION WITH THE**
 180f **PAWNSHOP ADVISORY BOARD, SHALL VERIFY BEFORE A BID IS AWARDED THAT THE §**

180g § SELECTED ENTITY MEETS THE REQUIREMENTS OF SUBSECTION (4)(a).
180h (c) IF ANY ENTITY IS AWARDED A BID UNDER THIS SUBSECTION (4) AND IS LATER FOUND
180i TO HOLD ANY INTEREST IN VIOLATION OF SUBSECTION (4)(a), THE AWARD IS SUBJECT TO BEING
180j OPENED AGAIN FOR REQUEST FOR PROPOSAL. §
180j1 Ĥ (5) INFORMATION ENTERED IN THE DATABASE SHALL BE RETAINED FOR FIVE YEARS
180j2 AND SHALL THEN BE DELETED. ĥ
181 Section 6. Section **13-32a-106** is enacted to read:
182 **13-32a-106. Transaction information provided to the central database -- Protected**

183 **information.**

184 (1) The information required to be recorded under Sections 13-32a-103 and
185 13-32a-104 that is capable of being transmitted electronically shall be transmitted
186 electronically to the central database on the next business day following the transaction.

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

191 (3) (a) If a pawnshop experiences a computer or electronic malfunction that affects its
192 ability to report transactions as required in Subsection (1), the pawnshop shall immediately
193 notify the local law enforcement agency of the malfunction.

194 (b) The pawnshop shall solve the malfunction within three business days or notify law
195 enforcement under Subsection (4).

196 (4) If the computer or electronic malfunction under Subsection (3) cannot be solved
197 within three business days, the pawnshop shall notify the local law enforcement agency of the
198 reasons for the delay and provide documentation from a reputable computer maintenance
199 company of the reasons why the computer or electronic malfunction cannot be solved within
200 three business days.

201 (5) A computer or electronic malfunction does not suspend the pawnshop's obligation
202 to comply with all other provisions of this chapter.

203 (6) During the malfunction under Subsections (3) and (4), the pawnshop shall:

204 (a) maintain the pawn tickets and other information required under this chapter in a
205 written form; and

206 (b) arrange with the local law enforcement agency a mutually acceptable alternative
207 method by which the pawnshop provides the required information to the local law enforcement
208 official.

209 (7) Any pawnshop is subject to a civil penalty of \$50 per day if:

210 (a) the pawnshop is unable to submit the information electronically due to a computer
211 or electronic malfunction;

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

213 (c) the pawnshop has not provided documentation regarding its inability to solve the

214 malfunction as required under Subsection (4).

215 (8) All civil penalty payments under Subsection (7) shall be remitted to the Department
 216 of § [Financial Institutions] COMMERCE § , which shall deposit the fees in the account.

217 (9) A pawnshop is not responsible for a delay in transmission of information that
 218 results from a malfunction in the central database.

219 Section 7. Section **13-32a-107** is enacted to read:

220 **13-32a-107. Deadline for registers to be electronic -- Notice for updating.**

221 (1) On and after January 1, 2005, each pawnbroker in the state that generates ten or
 222 more pawn transactions per month shall maintain the register in an electronic format that is
 223 compatible with the central database computer system.

224 (2) On and after January 15, 2005, pawnbrokers under Subsection (1) shall pay a civil
 225 penalty of \$50 a day to the Department of § [Financial Institutions] COMMERCE § for each daily
 225a report required
 226 under Section 13-32a-106 that is submitted as a written report rather than electronically.

227 (3) The operators of the central database shall establish written procedures in
 228 conjunction with the Pawnshop Advisory Board to ensure that when the central database is
 229 upgraded, the affected pawnbrokers will receive adequate notice, information, and time to
 230 upgrade their computer systems so the systems are compatible with the upgraded central
 231 database.

232 Section 8. Section **13-32a-108** is enacted to read:

233 **13-32a-108. Retention of records -- Reasonable inspection.**

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

236 (2) (a) A law enforcement agency may conduct random reasonable inspections of
 237 pawnshops ~~to monitor~~ FOR THE PURPOSE OF MONITORING compliance with THE
 237a REPORTING REQUIREMENTS OF this chapter. THE INSPECTIONS MAY BE CONDUCTED TO:

237b (i) CONFIRM THAT PAWNED ITEMS MATCH THE DESCRIPTION REPORTED TO THE
 237c DATABASE BY THE PAWNSHOP; AND

237d (ii) MAKE SPOT CHECKS OF PROPERTY AT THE PAWNSHOP TO DETERMINE IF THE
 237e PROPERTY IS APPROPRIATELY REPORTED.

238 (b) Inspections UNDER SUBSECTION (2)(a) shall be performed during the regular
 238a business hours of the pawnshop.

239 Section 9. Section **13-32a-109** is enacted to read:

240 **13-32a-109. Holding period for pawned articles.**

241 (1) (a) The pawnbroker shall hold all articles pawned or sold to him for not fewer than

242 30 days after the date of receipt of the article, except that the pawnbroker may within this time
243 period return an article to the person who pawned it.

244 (b) This Subsection (1) does not preclude a law enforcement agency from requiring a

245 pawnbroker to hold an article longer than 30 days if necessary in the course of an investigation.

246 (2) If a law enforcement agency seizes an article or requires the pawnbroker to hold an
247 article as part of an investigation, the agency shall provide to the pawnbroker a hold ticket
248 issued by the agency, which:

249 (a) states the active case number;

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

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

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

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

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

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

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

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

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

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

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

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

275 (8) If the article is subject to an investigation and a criminal prosecution results, the

276 prosecuting agency shall, upon disposition of the case, request restitution to the pawnbroker for
277 the crimes perpetrated against the pawnshop as a victim of theft by deception in addition to the
278 request for restitution to the original victim.

279 (9) If the original victim of the theft of the property files a police report and the
280 property is subsequently located at a pawnshop, the victim must fully cooperate with the
281 prosecution of the crimes perpetrated against the pawnshop as a victim of theft by deception, in
282 order to qualify for restitution regarding the property.

283 (10) If the victim does not wish to pursue criminal charges or does not cooperate in the
284 prosecution of the property theft against the defendant and the theft by deception committed
285 against the pawnshop, then the original victim must pay to the pawnshop the amount of money
286 financed by the pawnshop to the defendant in order to obtain the property.

287 (11) (a) The victim's cooperation in the prosecution of the property crimes and in the
288 prosecution of the theft by deception offense committed against the pawnshop suspends the
289 requirements of Subsections (9) and (10).

290 (b) If the victim cooperates in the prosecution under Subsection (11)(a) and the
291 defendants are convicted, the prosecuting agency shall direct the pawnshop to turn over the
292 property to the victim.

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

296 (12) A pawnshop must fully cooperate in the prosecution of the property crimes
297 committed against the original victim and the property crime of theft by deception committed
298 against the pawnshop in order to participate in any court-ordered restitution.

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

302 Section 10. Section **13-32a-110** is enacted to read:

303 **13-32a-110. Penalties.**

304 (1) A violation of any of the following sections is a class C misdemeanor:

305 (a) Section 13-32a-103, compliance with criminal code;

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

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

308 (d) Section 13-32a-108, retention of records; or

309 (e) Section 13-32a-109, holding period for pawned articles.

310 (2) This section does not prohibit civil action by a governmental entity regarding the

311 pawnbroker's business operation or licenses.

312 Section 11. Section **13-32a-111** is enacted to read:

313 **13-32a-111. Fees to fund training and central database.**

314 (1) On and after January 1, 2005, each pawnshop in operation shall annually pay \$250

315 to the Department of § [Financial Institutions] COMMERCE § , to be deposited in the account.

316 (2) On and after January 1, 2005, each law enforcement agency that participates in the

317 use of the database shall annually pay to the Department of § [Financial Institutions] COMMERCE §

317a a fee of \$2

318 per sworn law enforcement officer who is employed by the agency as of January 1 of that year.

319 The fee shall be deposited in the account.

320 (3) The fees under Subsections (1) and (2) shall be paid to the account annually on or

321 before January 30.

322 Section 12. Section **13-32a-112** is enacted to read:

323 **13-32a-112. Pawnshop Advisory Board -- Membership -- Duties -- Provide**

324 **training -- Records of compliance.**

325 (1) There is created within the Department of § [Financial Institutions] COMMERCE § the

325a Pawnshop

326 Advisory Board. The board consists of ten voting members and one nonvoting member:

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

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

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

330 (d) five representatives from the pawnshop industry who are appointed by the director

331 of the Utah Commission on Criminal and Juvenile Justice (CCJJ) and who represent five

332 separate pawnshops, each owned by a separate person or entity;

333 (e) one law enforcement officer who is appointed by the board members under

334 Subsections (1)(a) through (d);

335 (f) one law enforcement officer whose work regularly involves pawnshops and who is

336 appointed by the board members under Subsections (1)(a) through (d); and

337 (g) one representative from the central database, who is nonvoting.

338 (2) (a) The board shall elect one voting member as the chair of the board by a majority
 339 of the members present at the board's first meeting each year.

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

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

342 (3) (a) The board shall conduct quarterly training sessions regarding compliance with
 343 this chapter and other applicable state laws for any person defined as a pawnbroker in this
 344 chapter.

345 (b) Each training session shall provide not fewer than two hours of training.

346 (4) (a) Each § [pawnshop] PAWNBROKER § in operation as of January 1 shall ensure one or
 346a more persons
 347 employed by the pawnshop each participate in no fewer than four hours of compliance training
 348 within that year.

349 (b) This requirement does not limit the number of employees, directors, or officers of a
 350 pawnshop who attend the compliance training.

351 (5) The board shall monitor and keep a record of the hours of compliance training
 352 accrued by each pawnshop.

353 (6) The board shall provide each pawnshop with a certificate of compliance upon
 354 completion by an employee of the four hours of compliance training.

355 (7) (a) Each law enforcement agency that has a pawnshop located within its jurisdiction
 356 shall ensure that at least one of its officers completes four hours of compliance training yearly.

357 (b) This requirement does not limit the number of law enforcement officers who attend
 358 the compliance training.

359 Section 13. Section **13-32a-113** is enacted to read:

360 **13-32a-113. Pawnbroker Operations Restricted Account.**

361 (1) There is created within the General Fund a restricted account known as the
 362 "Pawnbroker Operations Restricted Account."

363 (2) (a) The account shall be funded from the fees and civil penalties imposed and
 364 collected under Sections 13-32a-106, 13-32a-107 and 13-32a-111. These fees and penalties
 365 shall be paid to the Department of § [Financial Institutions] COMMERCE § , which shall deposit
 365a them in the
 366 account.

367 (b) The Legislature may appropriate the funds in this account § :

367a (i) § to the board for the costs

368 of providing training required under this chapter, costs of the central database created in

369 Section 13-32a-105, and for costs of operation of the board § ; AND

369a (ii) TO THE DEPARTMENT OF COMMERCE FOR MANAGEMENT OF FEES AND PENALTIES PAID

369b UNDER THIS CHAPTER § .

370 (c) The board shall account to the Department of § [Financial Institutions] COMMERCE § for
 371 expenditures.

372 (d) The board shall account separately for expenditures for:

373 (i) training required under this chapter;

374 (ii) operation of the database;

375 (iii) operation of the board; and

376 (iv) costs of operation of the board.

377 Section 14. Section **13-32a-114** is enacted to read:

378 **13-32a-114. Preemption of local ordinances -- Exceptions.**

379 (1) This chapter preempts all city, county, and other local ordinances governing
 380 pawnshops, pawnbrokers and pawnbroking transactions, if the ordinances are more restrictive
 381 than the provisions of this chapter or are not consistent with this chapter.

382 (2) Subsection (1) does not preclude a city, county, or other local governmental unit
 383 from:

384 (a) enacting or enforcing local ordinances concerning public health, safety, or welfare,
 385 if the ordinances are uniform and equal in application to pawnshops and pawnbrokers ~~AND~~

385a **OTHER SIMILAR BUSINESSES OR ACTIVITIES ~~h~~ ;**

386 (b) requiring a pawnshop or pawnbroker to obtain and maintain a business license; and

387 (c) enacting zoning ordinances that restrict areas where pawnshops ~~AND OTHER SIMILAR~~

387a **BUSINESSES OR ACTIVITIES ~~h~~ can be located ~~AND~~**

388 **the pawnshops' hours of operation] ~~h~~ .**

389 Section 15. Section **63-2-304** is amended to read:

390 **63-2-304. Protected records.**

391 The following records are protected if properly classified by a governmental entity:

392 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
 393 has provided the governmental entity with the information specified in Section 63-2-308;

394 (2) commercial information or nonindividual financial information obtained from a
 395 person if:

396 (a) disclosure of the information could reasonably be expected to result in unfair
 397 competitive injury to the person submitting the information or would impair the ability of the
 398 governmental entity to obtain necessary information in the future;

399

(b) the person submitting the information has a greater interest in prohibiting access

400 than the public in obtaining access; and

401 (c) the person submitting the information has provided the governmental entity with
402 the information specified in Section 63-2-308;

403 (3) commercial or financial information acquired or prepared by a governmental entity
404 to the extent that disclosure would lead to financial speculations in currencies, securities, or
405 commodities that will interfere with a planned transaction by the governmental entity or cause
406 substantial financial injury to the governmental entity or state economy;

407 (4) records the disclosure of which could cause commercial injury to, or confer a
408 competitive advantage upon a potential or actual competitor of, a commercial project entity as
409 defined in Subsection 11-13-103(4);

410 (5) test questions and answers to be used in future license, certification, registration,
411 employment, or academic examinations;

412 (6) records the disclosure of which would impair governmental procurement
413 proceedings or give an unfair advantage to any person proposing to enter into a contract or
414 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
415 of a person to see bids submitted to or by a governmental entity after bidding has closed;

416 (7) records that would identify real property or the appraisal or estimated value of real
417 or personal property, including intellectual property, under consideration for public acquisition
418 before any rights to the property are acquired unless:

419 (a) public interest in obtaining access to the information outweighs the governmental
420 entity's need to acquire the property on the best terms possible;

421 (b) the information has already been disclosed to persons not employed by or under a
422 duty of confidentiality to the entity;

423 (c) in the case of records that would identify property, potential sellers of the described
424 property have already learned of the governmental entity's plans to acquire the property; or

425 (d) in the case of records that would identify the appraisal or estimated value of
426 property, the potential sellers have already learned of the governmental entity's estimated value
427 of the property;

428 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
429 compensated transaction of real or personal property including intellectual property, which, if
430 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value

431 of the subject property, unless:

432 (a) the public interest in access outweighs the interests in restricting access, including
433 the governmental entity's interest in maximizing the financial benefit of the transaction; or

434 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
435 the value of the subject property have already been disclosed to persons not employed by or
436 under a duty of confidentiality to the entity;

437 (9) records created or maintained for civil, criminal, or administrative enforcement
438 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
439 release of the records:

440 (a) reasonably could be expected to interfere with investigations undertaken for
441 enforcement, discipline, licensing, certification, or registration purposes;

442 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
443 proceedings;

444 (c) would create a danger of depriving a person of a right to a fair trial or impartial
445 hearing;

446 (d) reasonably could be expected to disclose the identity of a source who is not
447 generally known outside of government and, in the case of a record compiled in the course of
448 an investigation, disclose information furnished by a source not generally known outside of
449 government if disclosure would compromise the source; or

450 (e) reasonably could be expected to disclose investigative or audit techniques,
451 procedures, policies, or orders not generally known outside of government if disclosure would
452 interfere with enforcement or audit efforts;

453 (10) records the disclosure of which would jeopardize the life or safety of an
454 individual;

455 (11) records the disclosure of which would jeopardize the security of governmental
456 property, governmental programs, or governmental recordkeeping systems from damage, theft,
457 or other appropriation or use contrary to law or public policy;

458 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
459 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
460 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

461 (13) records that, if disclosed, would reveal recommendations made to the Board of

462 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
463 Board of Pardons and Parole, or the Department of Human Services that are based on the
464 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
465 jurisdiction;

466 (14) records and audit workpapers that identify audit, collection, and operational
467 procedures and methods used by the State Tax Commission, if disclosure would interfere with
468 audits or collections;

469 (15) records of a governmental audit agency relating to an ongoing or planned audit
470 until the final audit is released;

471 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
472 litigation that are not available under the rules of discovery;

473 (17) records disclosing an attorney's work product, including the mental impressions or
474 legal theories of an attorney or other representative of a governmental entity concerning
475 litigation;

476 (18) records of communications between a governmental entity and an attorney
477 representing, retained, or employed by the governmental entity if the communications would be
478 privileged as provided in Section 78-24-8;

479 (19) personal files of a legislator, including personal correspondence to or from a
480 member of the Legislature, provided that correspondence that gives notice of legislative action
481 or policy may not be classified as protected under this section;

482 (20) (a) records in the custody or control of the Office of Legislative Research and
483 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
484 legislation or contemplated course of action before the legislator has elected to support the
485 legislation or course of action, or made the legislation or course of action public; and

486 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
487 Office of Legislative Research and General Counsel is a public document unless a legislator
488 asks that the records requesting the legislation be maintained as protected records until such
489 time as the legislator elects to make the legislation or course of action public;

490 (21) research requests from legislators to the Office of Legislative Research and
491 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
492 in response to these requests;

- 493 (22) drafts, unless otherwise classified as public;
- 494 (23) records concerning a governmental entity's strategy about collective bargaining or
495 pending litigation;
- 496 (24) records of investigations of loss occurrences and analyses of loss occurrences that
497 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
498 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 499 (25) records, other than personnel evaluations, that contain a personal recommendation
500 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
501 personal privacy, or disclosure is not in the public interest;
- 502 (26) records that reveal the location of historic, prehistoric, paleontological, or
503 biological resources that if known would jeopardize the security of those resources or of
504 valuable historic, scientific, educational, or cultural information;
- 505 (27) records of independent state agencies if the disclosure of the records would
506 conflict with the fiduciary obligations of the agency;
- 507 (28) records of a public institution of higher education regarding tenure evaluations,
508 appointments, applications for admissions, retention decisions, and promotions, which could be
509 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
510 Meetings, provided that records of the final decisions about tenure, appointments, retention,
511 promotions, or those students admitted, may not be classified as protected under this section;
- 512 (29) records of the governor's office, including budget recommendations, legislative
513 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
514 policies or contemplated courses of action before the governor has implemented or rejected
515 those policies or courses of action or made them public;
- 516 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
517 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
518 recommendations in these areas;
- 519 (31) records provided by the United States or by a government entity outside the state
520 that are given to the governmental entity with a requirement that they be managed as protected
521 records if the providing entity certifies that the record would not be subject to public disclosure
522 if retained by it;
- 523 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body

524 except as provided in Section 52-4-7;

525 (33) records that would reveal the contents of settlement negotiations but not including
526 final settlements or empirical data to the extent that they are not otherwise exempt from
527 disclosure;

528 (34) memoranda prepared by staff and used in the decision-making process by an
529 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
530 other body charged by law with performing a quasi-judicial function;

531 (35) records that would reveal negotiations regarding assistance or incentives offered
532 by or requested from a governmental entity for the purpose of encouraging a person to expand
533 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
534 person or place the governmental entity at a competitive disadvantage, but this section may not
535 be used to restrict access to a record evidencing a final contract;

536 (36) materials to which access must be limited for purposes of securing or maintaining
537 the governmental entity's proprietary protection of intellectual property rights including patents,
538 copyrights, and trade secrets;

539 (37) the name of a donor or a prospective donor to a governmental entity, including a
540 public institution of higher education, and other information concerning the donation that could
541 reasonably be expected to reveal the identity of the donor, provided that:

542 (a) the donor requests anonymity in writing;

543 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
544 classified protected by the governmental entity under this Subsection (37); and

545 (c) except for public institutions of higher education, the governmental unit to which
546 the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and
547 has no regulatory or legislative authority over the donor, a member of his immediate family, or
548 any entity owned or controlled by the donor or his immediate family;

549 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and
550 73-18-13;

551 (39) a notification of workers' compensation insurance coverage described in Section
552 34A-2-205;

553 (40) (a) the following records of a public institution of education, which have been
554 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of

555 the institution:

556 (i) unpublished lecture notes;

557 (ii) unpublished research notes and data;

558 (iii) unpublished manuscripts;

559 (iv) creative works in process;

560 (v) scholarly correspondence; and

561 (vi) confidential information contained in research proposals; and

562 (b) Subsection (40)(a) may not be construed to affect the ownership of a record;

563 (41) (a) records in the custody or control of the Office of Legislative Auditor General

564 that would reveal the name of a particular legislator who requests a legislative audit prior to the

565 date that audit is completed and made public; and

566 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

567 Office of the Legislative Auditor General is a public document unless the legislator asks that

568 the records in the custody or control of the Office of Legislative Auditor General that would

569 reveal the name of a particular legislator who requests a legislative audit be maintained as

570 protected records until the audit is completed and made public;

571 (42) records that provide detail as to the location of an explosive, including a map or

572 other document that indicates the location of:

573 (a) a production facility; or

574 (b) a magazine;

575 (43) information contained in the database described in Section 62A-3-311.1;

576 (44) information contained in the Management Information System and Licensing

577 Information System described in Title 62A, Chapter 4a, Child and Family Services; ~~and~~

578 (45) information regarding National Guard operations or activities in support of the

579 National Guard's federal mission[-]; and

580 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency in

581 compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act.

582 Section 16. Section **76-6-408** is amended to read:

583 **76-6-408. Receiving stolen property -- Duties of pawnbrokers.**

584 (1) A person commits theft if he receives, retains, or disposes of the property of

585 another knowing that it has been stolen, or believing that it probably has been stolen, or who

586 conceals, sells, withholds or aids in concealing, selling, or withholding the property from the
587 owner, knowing the property to be stolen, intending to deprive the owner of it.

588 (2) The knowledge or belief required for Subsection (1) is presumed in the case of an
589 actor who:

590 (a) is found in possession or control of other property stolen on a separate occasion;

591 (b) has received other stolen property within the year preceding the receiving offense
592 charged; or

593 [~~(c) being a dealer in property of the sort received, retained, or disposed, acquires it for~~
594 ~~a consideration which he knows is far below its reasonable value; or]~~

595 [~~(d) if the value given for the property exceeds \$20;]~~

596 (c) is a pawnbroker or person who has or operates a business dealing in or collecting

597 used or secondhand merchandise or personal property, or an agent, employee, or representative

598 of a pawnbroker or person who buys, receives, or obtains property and fails to require the seller

599 or person delivering the property to:

600 (i) certify, in writing, that he has the legal rights to sell the property;

601 (ii) provide a legible print, preferably the right thumb, at the bottom of the certificate
602 next to his signature; and

603 (iii) provide at least one [~~other~~] positive form of [~~picture~~] identification.

604 (3) Every pawnbroker or person who has or operates a business dealing in or collecting
605 used or secondhand merchandise or personal property, and every agent, employee, or

606 representative of a pawnbroker or person who fails to comply with the requirements of

607 Subsection (2)(c) [~~(d) shall be~~] is presumed to have bought, received, or obtained the property

608 knowing it to have been stolen or unlawfully obtained. This presumption may be rebutted by
609 proof.

610 (4) When, in a prosecution under this section, it appears from the evidence that the

611 defendant was a pawnbroker or a person who has or operates a business dealing in or collecting
612 used or secondhand merchandise or personal property, or was an agent, employee, or

613 representative of a pawnbroker or person, that the defendant bought, received, concealed, or

614 withheld the property without obtaining the information required in Subsection (2)(d), then the

615 burden shall be upon the defendant to show that the property bought, received, or obtained was
616 not stolen.

617 (5) Subsections (2)~~(d)~~(c), (3), and (4) do not apply to scrap metal processors as
618 defined in Section 76-10-901.

619 (6) As used in this section:

620 ~~(b)~~ (a) "Dealer" means a person in the business of buying or selling goods.

621 (b) "Pawnbroker" means a person who:

622 (i) loans money on deposit of personal property, or deals in the purchase, exchange, or
623 possession of personal property on condition of selling the same property back again to the
624 pledge or depositor;

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

628 (iii) receives personal property in exchange for money or in trade for other personal
629 property.

630 ~~(a)~~ (c) "Receives" means acquiring possession, control, or title or lending on the
631 security of the property[;].

632 Section 17. **Effective date.**

633 This bill takes effect on January 1, 2005, except that Section 13-32a-105 takes effect on
634 December 1, 2004.

634a **§ SECTION 18. REPEAL DATE.**

634b **THIS BILL IS REPEALED ON MAY 2, 2005.** §

Legislative Review Note
as of 2-17-04 9:13 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

AMENDED BILL

State Impact

This bill creates the General Fund Restricted - Pawnbroker Operations Restricted Account which is funded from fees and penalties. The Department of Commerce will need \$45,500 from that account.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Restricted Funds	\$45,500	\$45,500	\$45,500	\$45,500
TOTAL	\$45,500	\$45,500	\$45,500	\$45,500

Individual and Business Impact

Pawnbrokers will pay annual fees of \$250 each to maintain the database. They will incur other costs to comply with the provisions of the bill that will vary according to individual circumstances. Local governments will pay \$2 per sworn officer.

Office of the Legislative Fiscal Analyst