

1                   **COMMERCIAL TRANSACTIONS OF PERSONAL**  
2   **PROPERTY**

3   2006 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Rebecca D. Lockhart**

6                                   Senate Sponsor: \_\_\_\_\_

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8   **LONG TITLE**

9   **General Description:**

10           This bill amends the Pawnshop Transaction Information Act regarding proof of identity  
11   and time requirements for holding merchandise.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ removes the requirement that a person must provide a fingerprint upon selling or
- 15   pawning an item to a pawnshop; and
- 16           ▶ provides that items sold to the pawnbroker may be resold without being subject to
- 17   the 30-day waiting period that applies to pawned items.

18   **Monies Appropriated in this Bill:**

19           None

20   **Other Special Clauses:**

21           None

22   **Utah Code Sections Affected:**

23   AMENDS:

24           **13-32a-103**, as enacted by Chapter 299, Laws of Utah 2004

25           **13-32a-104**, as enacted by Chapter 299, Laws of Utah 2004

26           **13-32a-109**, as enacted by Chapter 299, Laws of Utah 2004

27           **76-6-408**, as last amended by Chapter 299, Laws of Utah 2004



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

Section 1. Section **13-32a-103** is amended to read:

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

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

(1) legal right to the property; and

~~[(2) fingerprint; and]~~

~~[(3)]~~ (2) picture identification.

Section 2. Section **13-32a-104** is amended to read:

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

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

(a) the date and time of the transaction;

(b) the pawn transaction ticket number;

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

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

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

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

(iii) the person's signature; ~~[and]~~

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

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

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

59 register entry; and

60 (g) an accurate description of the article of property, including available identifying  
61 marks such as:

62 (i) names, brand names, numbers, serial numbers, model numbers, color,  
63 manufacturers' names, and size;

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

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

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

67 (v) any other unique identifying feature;

68 (vi) gold content, if indicated; and

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

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

77 Section 3. Section **13-32a-109** is amended to read:

78 **13-32a-109. Holding period for pawned articles.**

79 (1) (a) The pawnbroker shall hold all articles pawned [~~or sold~~] to him for not fewer  
80 than 30 days after the date of receipt of the article, except that the pawnbroker may within this  
81 time period return an article to the person who pawned it.

82 (b) [~~This~~] Subsection (1)(a) does not preclude a law enforcement agency from  
83 requiring a pawnbroker to hold an article longer than 30 days if necessary in the course of an  
84 investigation.

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

88 (a) states the active case number;

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

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

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

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

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

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

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

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

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

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

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

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

114 (8) If the article is subject to an investigation and a criminal prosecution results, the  
115 prosecuting agency shall, upon disposition of the case, request restitution to the pawnbroker for  
116 the crimes perpetrated against the pawnshop as a victim of theft by deception in addition to the  
117 request for restitution to the original victim.

118 (9) If the original victim of the theft of the property files a police report and the  
119 property is subsequently located at a pawnshop, the victim must fully cooperate with the  
120 prosecution of the crimes perpetrated against the pawnshop as a victim of theft by deception, in

121 order to qualify for restitution regarding the property.

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

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

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

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

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

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

141 Section 4. Section **76-6-408** is amended to read:

142 **76-6-408. Receiving stolen property -- Duties of pawnbrokers.**

143 (1) A person commits theft if he receives, retains, or disposes of the property of  
144 another knowing that it has been stolen, or believing that it probably has been stolen, or who  
145 conceals, sells, withholds or aids in concealing, selling, or withholding the property from the  
146 owner, knowing the property to be stolen, intending to deprive the owner of it.

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

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

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

152 (c) is a pawnbroker or person who has or operates a business dealing in or collecting  
153 used or secondhand merchandise or personal property, or an agent, employee, or representative  
154 of a pawnbroker or person who buys, receives, or obtains property and fails to require the seller  
155 or person delivering the property to:

- 156 (i) certify, in writing, that he has the legal rights to sell the property; and
- 157 ~~[(ii) provide a legible print, preferably the right thumb, at the bottom of the certificate~~  
158 ~~next to his signature; and]~~
- 159 ~~[(iii)]~~ (ii) provide at least one positive form of identification.

160 (3) Every pawnbroker or person who has or operates a business dealing in or collecting  
161 used or secondhand merchandise or personal property, and every agent, employee, or  
162 representative of a pawnbroker or person who fails to comply with the requirements of  
163 Subsection (2)(c) is presumed to have bought, received, or obtained the property knowing it to  
164 have been stolen or unlawfully obtained. This presumption may be rebutted by proof.

165 (4) When, in a prosecution under this section, it appears from the evidence that the  
166 defendant was a pawnbroker or a person who has or operates a business dealing in or collecting  
167 used or secondhand merchandise or personal property, or was an agent, employee, or  
168 representative of a pawnbroker or person, that the defendant bought, received, concealed, or  
169 withheld the property without obtaining the information required in Subsection (2)(d), then the  
170 burden shall be upon the defendant to show that the property bought, received, or obtained was  
171 not stolen.

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

174 (6) As used in this section:

- 175 (a) "Dealer" means a person in the business of buying or selling goods.
- 176 (b) "Pawnbroker" means a person who:
  - 177 (i) loans money on deposit of personal property, or deals in the purchase, exchange, or  
178 possession of personal property on condition of selling the same property back again to the  
179 pledge or depositor;
  - 180 (ii) loans or advances money on personal property by taking chattel mortgage security  
181 on the property and takes or receives the personal property into his possession and who sells  
182 the unredeemed pledges; or

183 (iii) receives personal property in exchange for money or in trade for other personal  
184 property.

185 (c) "Receives" means acquiring possession, control, or title or lending on the security  
186 of the property.

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**Legislative Review Note**  
**as of 12-13-05 3:16 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0133**

**Commercial Transactions of Personal Property**

*24-Jan-06*

*12:34 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Pawnshops and individuals selling to them will not have to bear fingerprinting costs.

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**Office of the Legislative Fiscal Analyst**