

Representative Rebecca D. Lockhart proposes the following substitute bill:

PAWNSHOP TRANSACTION INFORMATION

AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: Jon J. Greiner

LONG TITLE

General Description:

This bill amends the Pawnshop Transaction Information Act to include secondhand merchandise dealers.

Highlighted Provisions:

This bill:

- ▶ defines secondhand merchandise dealers;
- ▶ defines persons and entities who are not secondhand merchandise dealers, including antique shops;
- ▶ requires that secondhand merchandise dealers comply with all transaction identification, recordkeeping, reporting, training, and other provisions that apply to pawnbrokers, with the exception of regulation of pawn tickets; and
- ▶ requires that secondhand merchandise dealers provide data to the online database currently used by pawnbrokers.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

- 28 **13-32a-101**, as enacted by Chapter 299, Laws of Utah 2004
- 29 **13-32a-102**, as last amended by Chapter 290, Laws of Utah 2006
- 30 **13-32a-103**, as last amended by Chapter 290, Laws of Utah 2006
- 31 **13-32a-104**, as enacted by Chapter 299, Laws of Utah 2004
- 32 **13-32a-105**, as enacted by Chapter 299, Laws of Utah 2004
- 33 **13-32a-106**, as last amended by Chapter 256, Laws of Utah 2005
- 34 **13-32a-107**, as last amended by Chapter 256, Laws of Utah 2005
- 35 **13-32a-108**, as enacted by Chapter 299, Laws of Utah 2004
- 36 **13-32a-109**, as last amended by Chapter 290, Laws of Utah 2006
- 37 **13-32a-109.8**, as enacted by Chapter 290, Laws of Utah 2006
- 38 **13-32a-111**, as last amended by Chapter 290, Laws of Utah 2006
- 39 **13-32a-112**, as last amended by Chapter 256, Laws of Utah 2005
- 40 **13-32a-114**, as last amended by Chapter 256, Laws of Utah 2005
- 41 **63-2-304**, as last amended by Chapters 14, 174 and 261, Laws of Utah 2006

42

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

44 Section 1. Section **13-32a-101** is amended to read:

45 **CHAPTER 32a. PAWNSHOP AND SECONDHAND MERCHANDISE**
 46 **TRANSACTION INFORMATION ACT**

47 **13-32a-101. Title.**

48 This chapter is known as the "Pawnshop and Secondhand Merchandise Transaction
49 Information Act."

50 Section 2. Section **13-32a-102** is amended to read:

51 **13-32a-102. Definitions.**

52 As used in this chapter:

53 (1) "Account" means the Pawnbroker and Secondhand Merchandise Operations
54 Restricted Account created in Section 13-32a-113.

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

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

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

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

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

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

63 [~~2~~] (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board
64 created by this chapter.

65 [~~3~~] (5) "Central database" or "database" means the electronic database created and
66 operated under Section 13-32a-105.

67 [~~4~~] (6) "Division" means the Division of Consumer Protection in Title 13, Chapter 1,
68 Department of Commerce.

69 [~~5~~] (7) "Identification" means a form of positive identification issued by a
70 governmental entity that:

71 [~~a~~] (8) contains a numerical identifier and a photograph of the person identified; and

72 [~~b~~] (9) may include a state identification card, a state drivers license, a United States
73 military identification card, or a United States passport.

74 [~~6~~] (10) "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 is located.

77 [~~7~~] (11) "Misappropriated" means stolen, embezzled, converted, obtained by theft, or
78 otherwise appropriated without authority of the lawful owner.

79 [~~8~~] (12) "Original victim" means a victim who is not a party to the pawn transaction.

80 [~~9~~] (13) "Pawnbroker" means a person whose business engages in the following
81 activities:

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

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

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

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

90 [~~(d)~~] (e) engages in a licensed business enterprise as a pawnshop.

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

93 [~~(10)~~] (15) "Pawn ticket" means a document upon which information regarding a pawn
94 transaction is entered when the pawn transaction is made.

95 [~~(H)~~] (16) "Pawn transaction" means an extension of credit in which an individual
96 delivers property to a pawnbroker for an advance of money and retains the right to redeem the
97 property for the redemption price within a fixed period of time.

98 [~~(12)~~] (17) "Pawnshop" means the physical location or premises where a pawnbroker
99 conducts business.

100 [~~(13)~~] (18) "Pledgor" means a person who conducts a pawn transaction with a
101 pawnshop.

102 [~~(14)~~] (19) "Property" means any tangible personal property.

103 [~~(15)~~] (20) "Register" means the record of information required under this chapter to be
104 maintained by [~~the pawnbroker~~] pawn and secondhand businesses. The register is an electronic
105 record that is in a format that is compatible with the central database.

106 (21) (a) "Secondhand merchandise dealer" means an owner or operator of a business
107 that:

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

110 (ii) does not function as a pawnbroker.

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

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

113 (ii) any person or entity who operates auction houses, flea markets, or vehicle, vessel,
114 and outboard motor dealers as defined in Section 41-1a-102;

115 (iii) the sale of secondhand goods at events commonly known as "garage sales," "yard
116 sales," or "estate sales";

117 (iv) the sale or receipt of secondhand books, magazines, or post cards;

118 (v) the sale or receipt of used merchandise donated to recognized nonprofit, religious,

119 or charitable organizations or any school-sponsored association for which no compensation is
 120 paid;

121 (vi) the sale or receipt of secondhand clothing and shoes;

122 (vii) any person offering his own personal property for sale, purchase, consignment, or
 123 trade via the Internet;

124 (viii) any person or entity offering the personal property of others for sale, purchase,
 125 consignment, ro trade via the Internet, when that person or entity does not have, and is not
 126 required to have, a local business or occupational for this activity;

127 (ix) any owner or operator of a retail business that receives used merchandise as a
 128 trade-in for similar new merchandise; or

129 (x) an owner or operator of a business that contracts with other persons or entities to
 130 offer those persons' secondhand goods for sale, purchase, consignment, or trade via the
 131 Internet.

132 Section 3. Section **13-32a-103** is amended to read:

133 **13-32a-103. Compliance with criminal code and this chapter.**

134 Every [~~pawnbroker~~] pawn or secondhand business shall, regarding each article of
 135 property a person pawns or sells, comply with the requirements of this chapter and the
 136 requirements of Subsections 76-6-408(2)(c)(i) through (iii) regarding the person's:

137 (1) legal right to the property;

138 (2) fingerprint; and

139 (3) picture identification.

140 Section 4. Section **13-32a-104** is amended to read:

141 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
 142 **items.**

143 (1) Every pawnbroker or secondhand merchandise dealer shall keep a register of [~~pawn~~
 144 transactions, in which the pawnbroker] each article of property a person pawns or sells to the
 145 pawnbroker or secondhand merchandise dealer, except as provided in Subsection
 146 13-32a-102(17)(b) regarding secondhand merchandise dealers. Every pawn and secondhand
 147 business owner or operator, or his employee, shall enter the following information regarding
 148 every article pawned or sold to [him] the owner or employee:

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

- 150 (b) the pawn transaction ticket number, if the article is pawned;
- 151 (c) the date by which the article must be redeemed;
- 152 (d) the following information regarding the person who pawns or sells the article:
- 153 (i) the person's name, residence address, and date of birth;
- 154 (ii) the number of the driver license or other form of positive identification presented
- 155 by the person, and notations of discrepancies if the person's physical description, including
- 156 gender, height, weight, race, age, hair color, and eye color, does not correspond with
- 157 identification provided by the person;
- 158 (iii) the person's signature; and
- 159 (iv) a legible fingerprint of the person's right thumb, or if the right thumb cannot be
- 160 fingerprinted, a legible fingerprint of the person with a written notation identifying the
- 161 fingerprint and the reason why the thumb print was unavailable;
- 162 (e) the amount loaned on or paid for the article, or the article for which it was traded;
- 163 (f) the identification of the [~~pawnbroker~~] pawn or secondhand business owner or [~~his~~]
- 164 the employee, whoever is making the register entry; and
- 165 (g) an accurate description of the article of property, including available identifying
- 166 marks such as:
- 167 (i) names, brand names, numbers, serial numbers, model numbers, color,
- 168 manufacturers' names, and size;
- 169 (ii) metallic composition, and any jewels, stones, or glass;
- 170 (iii) any other marks of identification or indicia of ownership on the article;
- 171 (iv) the weight of the article, if the payment is based on weight;
- 172 (v) any other unique identifying feature;
- 173 (vi) gold content, if indicated; and
- 174 (vii) if multiple articles of a similar nature are delivered together in one transaction and
- 175 the articles do not bear serial or model numbers and do not include precious metals or
- 176 gemstones, such as musical or video recordings, books, or hand tools, the description of the
- 177 articles is adequate if it includes the quantity of the articles and a description of the type of
- 178 articles delivered.
- 179 (2) A pawnshop pawn or secondhand business may not accept any personal property if,
- 180 upon inspection, it is apparent that serial numbers, model names, or identifying characteristics

181 have been intentionally defaced on that article of property.

182 Section 5. Section **13-32a-105** is amended to read:

183 **13-32a-105. Central database.**

184 (1) There is created under this section a central database as a statewide repository for
185 all information [~~pawnbrokers~~] pawn and secondhand businesses are required to submit in
186 accordance with this chapter and for the use of all participating law enforcement agencies
187 whose jurisdictions include one or more [~~pawnshops~~] pawn or secondhand businesses.

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

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

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

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

195 (4) (a) Any entity submitting a bid to create, maintain, and operate the database
196 pursuant to the request for proposal conducted by the Division of Purchasing and General
197 Services may not hold any financial or operating interest in any pawnshop in any state.

198 (b) The Division of Purchasing and General Services, in conjunction with the
199 Pawnshop and Secondhand Merchandise Advisory Board, shall verify before a bid is awarded
200 that the selected entity meets the requirements of Subsection (4)(a).

201 (c) If any entity is awarded a bid under this Subsection (4) and is later found to hold
202 any interest in violation of Subsection (4)(a), the award is subject to being opened again for
203 request for proposal.

204 (5) Information entered in the database shall be retained for five years and shall then be
205 deleted.

206 Section 6. Section **13-32a-106** is amended to read:

207 **13-32a-106. Transaction information provided to the central database --**
208 **Protected information.**

209 (1) The information required to be recorded under Sections 13-32a-103 and
210 13-32a-104 that is capable of being transmitted electronically shall be transmitted
211 electronically to the central database on the next business day following the transaction.

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

216 (3) (a) If a [~~pawnshop~~] pawn or secondhand business experiences a computer or
217 electronic malfunction that affects its ability to report transactions as required in Subsection
218 (1), the [~~pawnshop~~] pawn or secondhand business shall immediately notify the local law
219 enforcement agency of the malfunction.

220 (b) The [~~pawnshop~~] pawn or secondhand business shall solve the malfunction within
221 three business days or notify law enforcement under Subsection (4).

222 (4) If the computer or electronic malfunction under Subsection (3) cannot be solved
223 within three business days, the [~~pawnshop~~] pawn or secondhand business shall notify the local
224 law enforcement agency of the reasons for the delay and provide documentation from a
225 reputable computer maintenance company of the reasons why the computer or electronic
226 malfunction cannot be solved within three business days.

227 (5) A computer or electronic malfunction does not suspend the [~~pawnshop's~~] pawn or
228 secondhand business' obligation to comply with all other provisions of this chapter.

229 (6) During the malfunction under Subsections (3) and (4), the [~~pawnshop~~] pawn or
230 secondhand business shall:

231 [~~(a) maintain the pawn tickets and other information required under this chapter in a~~
232 ~~written form; and]~~

233 [~~(b)~~] (a) arrange with the local law enforcement agency a mutually acceptable
234 alternative method by which the [~~pawnshop~~] pawn or secondhand business provides the
235 required information to the local law enforcement official[-]; and

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

238 (7) A [~~pawnshop~~] pawn or secondhand business that violates the electronic transaction
239 reporting requirement of this section is subject to an administrative fine of \$50 per day if:

240 (a) the [~~pawnshop~~] pawn or secondhand business is unable to submit the information
241 electronically due to a computer or electronic malfunction;

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

243 (c) the ~~[pawnshop]~~ pawn or secondhand business has not provided documentation
244 regarding its inability to solve the malfunction as required under Subsection (4).

245 (8) A ~~[pawnshop]~~ pawn or secondhand business is not responsible for a delay in
246 transmission of information that results from a malfunction in the central database.

247 Section 7. Section **13-32a-107** is amended to read:

248 **13-32a-107. Deadline for registers to be electronic -- Notice for updating.**

249 (1) On and after January 1, 2005, each ~~[pawnbroker]~~ pawn and secondhand business in
250 the state that generates ten or more pawn transactions per month or 50 or more sales
251 transactions per month shall maintain the register in an electronic format that is compatible
252 with the central database computer system.

253 (2) (a) On and after January 15, 2005, ~~[pawnbrokers]~~ pawn and secondhand businesses
254 under Subsection (1) are subject to an administrative fine of \$50 a day for each daily report
255 required under Section 13-32a-106 that is submitted as a written report rather than
256 electronically.

257 (b) Fines imposed under this section shall be paid to the division, which shall deposit
258 the fines in the account.

259 (3) The operators of the central database shall establish written procedures in
260 conjunction with the Pawnshop and Secondhand Merchandise Advisory Board to ensure that
261 when the central database is upgraded, the affected ~~[pawnbrokers]~~ pawn and secondhand
262 businesses will receive adequate notice, information, and time to upgrade their computer
263 systems so the systems are compatible with the upgraded central database.

264 Section 8. Section **13-32a-108** is amended to read:

265 **13-32a-108. Retention of records -- Reasonable inspection.**

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

268 (2) (a) A law enforcement agency may conduct random reasonable inspections of
269 ~~[pawnshops]~~ pawn or secondhand businesses for the purpose of monitoring compliance with
270 the reporting requirements of this chapter. The inspections may be conducted to:

271 (i) confirm that pawned items match the description reported to the database by the
272 pawnshop; and

273 (ii) make spot checks of property at the ~~[pawnshop]~~ pawn or secondhand business to

274 determine if the property is appropriately reported.

275 (b) Inspections under Subsection (2)(a) shall be performed during the regular business
276 hours of the ~~[pawnshop]~~ pawn or secondhand business.

277 Section 9. Section **13-32a-109** is amended to read:

278 **13-32a-109. Holding period for pawned articles.**

279 (1) (a) The pawnbroker may sell any article pawned to him:

280 (i) after the expiration of the contract period between the pawnbroker and the pledgor;
281 and

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

284 (b) If an article is purchased by the ~~[pawnbroker]~~ pawn or secondhand business, the
285 ~~[pawnbroker]~~ pawn or secondhand business may sell the article after the ~~[pawnbroker]~~ pawn or
286 secondhand business has held the article for ten days and complied with the requirements of
287 Section 13-32a-106 regarding reporting to the central database and Section 13-32a-103.

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

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

293 (ii) If the article was sold to the ~~[pawnbroker]~~ pawn or secondhand business, the law
294 enforcement agency may require the article be held if the ~~[pawnbroker]~~ pawn or secondhand
295 business has not sold the article.

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

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

303 (a) states the active case number;

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

305 (c) facilitates the [~~pawnbroker's ability~~] ability of the pawn or secondhand business to
306 track the article when the prosecution takes over the case.

307 (3) If an article is not seized by a law enforcement agency that has placed a hold on the
308 property, the property may remain in the custody of the [~~pawnbroker~~] pawn or secondhand
309 business until further disposition by the law enforcement agency, and as consistent with this
310 chapter.

311 (4) The initial hold by a law enforcement agency is for a period of 45 days. If the
312 article is not seized by the law enforcement agency, the article shall remain in the custody of
313 the [~~pawnshop~~] pawn or secondhand business and is subject to the hold unless exigent
314 circumstances require the purchased or pawned article to be seized by the law enforcement
315 agency.

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

318 (b) When there is an extension of a hold under Subsection (5)(a), the requesting law
319 enforcement agency shall notify the [~~pawnshop~~] pawn or secondhand business that is subject to
320 the hold prior to the expiration of the initial 45 days.

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

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

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

327 (a) notify the [~~pawnshop~~] pawn or secondhand business in writing that the hold or
328 seizure has been terminated;

329 (b) return the article subject to the seizure to the [~~pawnbroker~~] pawn or secondhand
330 business; or

331 (c) if the article is not returned to the [~~pawnbroker~~] pawn or secondhand business,
332 advise the [~~pawnbroker~~] pawn or secondhand business either in writing or electronically of the
333 specific alternative disposition of the article.

334 Section 10. Section **13-32a-109.8** is amended to read:

335 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

336 (1) If the article pawned or sold under Section 13-32a-109 is subject to an investigation
337 and a criminal prosecution results, the prosecuting agency shall, prior to disposition of the case:

338 (a) request restitution to the [~~pawnbroker~~] pawn or secondhand business for the crimes
339 perpetrated against the [~~pawnshop~~] pawn or secondhand business as a victim of theft by
340 deception; and

341 (b) request restitution for the original victim.

342 (2) If the original victim of the theft of the property files a police report and the
343 property is subsequently located at a [~~pawnshop~~] pawn or secondhand business, the victim
344 must fully cooperate with the prosecution of the crimes perpetrated against the [~~pawnshop~~]
345 pawn or secondhand business as a victim of theft by deception, in order to qualify for
346 restitution regarding the property.

347 (3) If the original victim does not pursue criminal charges or does not cooperate in the
348 prosecution of the property theft crimes charged against the defendant and the theft by
349 deception charges committed against the [~~pawnshop~~] pawn or secondhand business, then the
350 original victim must pay to the [~~pawnshop~~] pawn or secondhand business the amount of money
351 financed or paid by the [~~pawnshop~~] pawn or secondhand business to the defendant in order to
352 obtain the property.

353 (4) (a) The victim's cooperation in the prosecution of the property crimes and in the
354 prosecution of the theft by deception offense committed against the [~~pawnshop~~] pawn or
355 secondhand business suspends the requirements of Subsections (2) and (3).

356 (b) If the victim cooperates in the prosecution under Subsection (4)(a) and the
357 defendants are convicted, the prosecuting agency shall direct the [~~pawnshop~~] pawn or
358 secondhand business to turn over the property to the victim.

359 (c) Upon receipt of notice from the prosecuting agency that the property must be turned
360 over to the victim, the [~~pawnshop~~] pawn or secondhand business shall return the property to the
361 victim as soon as reasonably possible.

362 (5) A [~~pawnshop~~] pawn or secondhand business must fully cooperate in the
363 prosecution of the property crimes committed against the original victim and the property
364 crime of theft by deception committed against the [~~pawnshop~~] pawn or secondhand business in
365 order to participate in any court-ordered restitution.

366 (6) At all times during the course of a criminal investigation and subsequent

367 prosecution, the article subject to a law enforcement hold shall be kept secure by the
368 [~~pawnshop~~] pawn or secondhand business subject to the hold unless [~~the~~] a pawned article has
369 been seized by the law enforcement agency pursuant to Section 13-32a-109.5.

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

371 **13-32a-111. Fees to fund training and central database.**

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

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

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

380 (4) (a) If a law enforcement agency outside Utah requests access to the central
381 database, the requesting agency shall pay a yearly fee of \$750 for the fiscal year beginning July
382 1, 2006, which shall be deposited in the account.

383 (b) The board may establish the fee amount for fiscal years beginning on and after July
384 1, 2007 under Section 63-38-3.2.

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

386 **13-32a-112. Pawnshop or Secondhand Merchandise Advisory Board --**

387 **Membership -- Duties -- Provide training -- Records of compliance.**

388 (1) There is created within the division the Pawnshop and Secondhand Merchandise
389 Advisory Board. The board consists of [~~ten~~] 11 voting members and one nonvoting member:

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

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

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

393 (d) [~~five~~] three representatives from the pawnshop industry and three representatives
394 from the secondhand merchandise business industry, who are all appointed by the director of
395 the Utah Commission on Criminal and Juvenile Justice (CCJJ) and who represent [~~five~~] three
396 separate pawnshops, and three separate secondhand merchandise dealers, each of which are
397 owned by a separate person or entity;

398 (e) one law enforcement officer who is appointed by the board members under
399 Subsections (1)(a) through (d);

400 (f) one law enforcement officer whose work regularly involves [~~pawnshops~~] pawn and
401 secondhand businesses and who is appointed by the board members under Subsections (1)(a)
402 through (d); and

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

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

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

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

408 (3) (a) The board shall conduct quarterly training sessions regarding compliance with
409 this chapter and other applicable state laws for any person [~~defined as a pawnbroker~~] who owns
410 or is employed by a pawn or secondhand business in this chapter.

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

412 (4) (a) Each [~~pawnbroker~~] pawn or secondhand business in operation as of January 1
413 shall ensure one or more persons employed by the [~~pawnshop~~] pawn or secondhand business
414 each participate in no fewer than four hours of compliance training within that year.

415 (b) This requirement does not limit the number of employees, directors, or officers of a
416 [~~pawnshop~~] pawn or secondhand business who attend the compliance training.

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

419 (6) The board shall provide each [~~pawnshop~~] pawn or secondhand business with a
420 certificate of compliance upon completion by an employee of the four hours of compliance
421 training.

422 (7) (a) Each law enforcement agency that has a [~~pawnshop~~] pawn or secondhand
423 business located within its jurisdiction shall ensure that at least one of its officers completes
424 four hours of compliance training yearly.

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

427 Section 13. Section **13-32a-114** is amended to read:

428 **13-32a-114. Preemption of local ordinances -- Exceptions.**

429 (1) This chapter preempts all city, county, and other local ordinances governing
430 [~~pawnshops, pawnbrokers;~~] pawn or secondhand businesses and pawnbroking transactions, if
431 the ordinances are more restrictive than the provisions of this chapter or are not consistent with
432 this chapter.

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

435 (a) enacting or enforcing local ordinances concerning public health, safety, or welfare,
436 if the ordinances are uniform and equal in application to [~~pawnshops and pawnbrokers~~] pawn
437 and secondhand businesses and other retail businesses or activities;

438 (b) requiring a [~~pawnshop or pawnbroker~~] pawn or secondhand business to obtain and
439 maintain a business license; and

440 (c) enacting zoning ordinances that restrict areas where [~~pawnshops~~] pawn or
441 secondhand businesses and other retail businesses or activities can be located.

442 Section 14. Section **63-2-304** is amended to read:

443 **63-2-304. Protected records.**

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

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

447 (2) commercial information or nonindividual financial information obtained from a
448 person if:

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

452 (b) the person submitting the information has a greater interest in prohibiting access
453 than the public in obtaining access; and

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

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

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

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

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

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

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

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

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

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

481 (e) the property under consideration for public acquisition is a single family residence
482 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
483 the property as required under Section 78-34-4.5;

484 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
485 compensated transaction of real or personal property including intellectual property, which, if
486 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
487 of the subject property, unless:

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

490 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of

491 the value of the subject property have already been disclosed to persons not employed by or
492 under a duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

517 (13) records that, if disclosed, would reveal recommendations made to the Board of
518 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
519 Board of Pardons and Parole, or the Department of Human Services that are based on the
520 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
521 jurisdiction;

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

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

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

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

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

535 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
536 from a member of the Legislature; and

537 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
538 legislative action or policy may not be classified as protected under this section; and

539 (b) (i) an internal communication that is part of the deliberative process in connection
540 with the preparation of legislation between:

541 (A) members of a legislative body;

542 (B) a member of a legislative body and a member of the legislative body's staff; or

543 (C) members of a legislative body's staff; and

544 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
545 legislative action or policy may not be classified as protected under this section;

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

550 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
551 Office of Legislative Research and General Counsel is a public document unless a legislator
552 asks that the records requesting the legislation be maintained as protected records until such

553 time as the legislator elects to make the legislation or course of action public;

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

557 (22) drafts, unless otherwise classified as public;

558 (23) records concerning a governmental entity's strategy about collective bargaining or
559 pending litigation;

560 (24) records of investigations of loss occurrences and analyses of loss occurrences that
561 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
562 Uninsured Employers' Fund, or similar divisions in other governmental entities;

563 (25) records, other than personnel evaluations, that contain a personal recommendation
564 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
565 personal privacy, or disclosure is not in the public interest;

566 (26) records that reveal the location of historic, prehistoric, paleontological, or
567 biological resources that if known would jeopardize the security of those resources or of
568 valuable historic, scientific, educational, or cultural information;

569 (27) records of independent state agencies if the disclosure of the records would
570 conflict with the fiduciary obligations of the agency;

571 (28) records of an institution within the state system of higher education defined in
572 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
573 retention decisions, and promotions, which could be properly discussed in a meeting closed in
574 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
575 the final decisions about tenure, appointments, retention, promotions, or those students
576 admitted, may not be classified as protected under this section;

577 (29) records of the governor's office, including budget recommendations, legislative
578 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
579 policies or contemplated courses of action before the governor has implemented or rejected
580 those policies or courses of action or made them public;

581 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
582 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
583 recommendations in these areas;

584 (31) records provided by the United States or by a government entity outside the state
585 that are given to the governmental entity with a requirement that they be managed as protected
586 records if the providing entity certifies that the record would not be subject to public disclosure
587 if retained by it;

588 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
589 except as provided in Section 52-4-206;

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

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

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

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

604 (37) the name of a donor or a prospective donor to a governmental entity, including an
605 institution within the state system of higher education defined in Section 53B-1-102, and other
606 information concerning the donation that could reasonably be expected to reveal the identity of
607 the donor, provided that:

608 (a) the donor requests anonymity in writing;

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

611 (c) except for an institution within the state system of higher education defined in
612 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
613 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
614 over the donor, a member of the donor's immediate family, or any entity owned or controlled

615 by the donor or the donor's immediate family;

616 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
617 73-18-13;

618 (39) a notification of workers' compensation insurance coverage described in Section
619 34A-2-205;

620 (40) (a) the following records of an institution within the state system of higher
621 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
622 or received by or on behalf of faculty, staff, employees, or students of the institution:

623 (i) unpublished lecture notes;

624 (ii) unpublished notes, data, and information:

625 (A) relating to research; and

626 (B) of:

627 (I) the institution within the state system of higher education defined in Section
628 53B-1-102; or

629 (II) a sponsor of sponsored research;

630 (iii) unpublished manuscripts;

631 (iv) creative works in process;

632 (v) scholarly correspondence; and

633 (vi) confidential information contained in research proposals;

634 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
635 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

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

637 (41) (a) records in the custody or control of the Office of Legislative Auditor General
638 that would reveal the name of a particular legislator who requests a legislative audit prior to the
639 date that audit is completed and made public; and

640 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
641 Office of the Legislative Auditor General is a public document unless the legislator asks that
642 the records in the custody or control of the Office of Legislative Auditor General that would
643 reveal the name of a particular legislator who requests a legislative audit be maintained as
644 protected records until the audit is completed and made public;

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

646 other document that indicates the location of:

647 (a) a production facility; or

648 (b) a magazine;

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

650 (44) information contained in the Management Information System and Licensing
651 Information System described in Title 62A, Chapter 4a, Child and Family Services;

652 (45) information regarding National Guard operations or activities in support of the
653 National Guard's federal mission;

654 (46) records provided by any [~~pawnbroker or pawnshop~~] pawn or secondhand business
655 to a law enforcement agency or to the central database in compliance with Title 13, Chapter
656 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

657 (47) information regarding food security, risk, and vulnerability assessments performed
658 by the Department of Agriculture and Food;

659 (48) except to the extent that the record is exempt from this chapter pursuant to Section
660 63-2-106, records related to an emergency plan or program prepared or maintained by the
661 Division of Emergency Services and Homeland Security the disclosure of which would
662 jeopardize:

663 (a) the safety of the general public; or

664 (b) the security of:

665 (i) governmental property;

666 (ii) governmental programs; or

667 (iii) the property of a private person who provides the Division of Emergency Services
668 and Homeland Security information;

669 (49) records of the Department of Agriculture and Food relating to the National
670 Animal Identification System or any other program that provides for the identification, tracing,
671 or control of livestock diseases, including any program established under Title 4, Chapter 24,
672 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
673 Quarantine;

674 (50) as provided in Section 26-39-109:

675 (a) information or records held by the Department of Health related to a complaint
676 regarding a child care program or residential child care which the department is unable to

677 substantiate; and

678 (b) information or records related to a complaint received by the Department of Health
679 from an anonymous complainant regarding a child care program or residential child care; and

680 (51) unless otherwise classified as public under Section 63-2-301 and except as
681 provided under Section 41-1a-116, an individual's home address, home telephone number, or
682 personal mobile phone number, if:

683 (a) the individual is required to provide the information in order to comply with a law,
684 ordinance, rule, or order of a government entity; and

685 (b) the subject of the record has a reasonable expectation that this information will be
686 kept confidential due to:

687 (i) the nature of the law, ordinance, rule, or order; and

688 (ii) the individual complying with the law, ordinance, rule, or order.

H.B. 402 1st Sub. (Buff) - Pawnshop Transaction Information Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will require an appropriation of \$84,000 from the General Fund Restricted - Pawnshop and Secondhand Merchandise Account in FY 2008 to the Department of Commerce for staff and related costs necessary to implement provisions of this bill. This includes \$14,000 of one-time costs in FY 2008 for database enhancements. The bill will generate additional revenue, estimated at \$300,000 annually, to the General Fund Restricted - Pawnshop and Secondhand Merchandise Account.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund Restricted	\$0	\$84,000	\$70,000	\$0	\$300,000	\$300,000
Total	\$0	\$84,000	\$70,000	\$0	\$300,000	\$300,000

Individual, Business and/or Local Impact

Local governments could see an increase in the number of cases generated by enforcement. Businesses will see some costs related to formatting information to be compatible with the central database repository. These costs will vary by business. There should be no direct impact on individuals.
