

1 **PROPERTY TRANSACTION AMENDMENTS**

2 2008 GENERAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: Jon J. Greiner

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Pawnshop and Secondhand Merchandise Transaction Information
10 Act regarding functions of the Division of Consumer Protection and exemption of
11 certain businesses.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ directs the Division of Consumer Protection to by rule exempt from regulation
15 specific classes of businesses that deal in secondhand goods;
- 16 ▶ directs the division to consult with the board when making the administrative rules
17 to exempt the specified types of businesses that deal in secondhand goods; and
- 18 ▶ requires that prior to November 30, 2008, the Division of Consumer Protection
19 report to the Legislature regarding issues considered and actions taken by the
20 division and by the Pawnshop and Secondhand Merchandise Advisory Board during
21 the year.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **13-32a-102**, as last amended by Laws of Utah 2007, Chapter 352

29 **13-32a-102.5**, as enacted by Laws of Utah 2005, Chapter 256

30 **13-32a-104**, as last amended by Laws of Utah 2007, Chapter 352

31 **13-32a-112**, as last amended by Laws of Utah 2007, Chapter 352

32 **13-32a-113**, as last amended by Laws of Utah 2006, Chapter 290

33 ENACTS:

34 **13-32a-112.5**, Utah Code Annotated 1953



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

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

38 **13-32a-102. Definitions.**

39 As used in this chapter:

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

41 Restricted Account created in Section 13-32a-113.

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

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

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

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

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

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

50 (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board
51 created by this chapter.

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

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

56 (7) "Identification" means a form of positive identification issued by a governmental
57 entity and that:

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

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

61 (8) "Local law enforcement agency" means the law enforcement agency that has direct
62 responsibility for ensuring compliance with central database reporting requirements for the
63 jurisdiction where the pawnshop is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (17) "Property" means any tangible personal property.

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

91 (19) (a) "Secondhand merchandise dealer" means an owner or operator of a business
92 that:

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

95 (ii) does not function as a pawnbroker.

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

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

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

99 ~~[(ii)]~~ (iii) any person or entity who operates auction houses, flea markets, or vehicle,
100 vessel, and outboard motor dealers as defined in Section 41-1a-102;

101 ~~[(iii)]~~ (iv) the sale of secondhand goods at events commonly known as "garage sales,"
102 "yard sales," or "estate sales";

103 ~~[(iv)]~~ (v) the sale or receipt of secondhand books, magazines, or post cards;

104 ~~[(v)]~~ (vi) the sale or receipt of used merchandise donated to recognized nonprofit,
105 religious, or charitable organizations or any school-sponsored association, and for which no
106 compensation is paid;

107 ~~[(vi)]~~ (vii) the sale or receipt of secondhand clothing and shoes;

108 ~~[(vii)]~~ (viii) any person offering his own personal property for sale, purchase,
109 consignment, or trade via the Internet;

110 ~~[(viii)]~~ (ix) any person or entity offering the personal property of others for sale,
111 purchase, consignment, or trade via the Internet, when that person or entity does not have, and
112 is not required to have, a local business or occupational license or other authorization for this
113 activity;

114 ~~[(ix)]~~ (x) any owner or operator of a retail business that receives used merchandise as a
115 trade-in for similar new merchandise; or

116 ~~[(x)]~~ (xi) an owner or operator of a business that contracts with other persons or
117 entities to offer those persons' secondhand goods for sale, purchase, consignment, or trade via
118 the Internet.

119 Section 2. Section **13-32a-102.5** is amended to read:

120 **13-32a-102.5. Administration and enforcement -- Report to Legislature.**

121 (1) The division shall administer and enforce this chapter in accordance with the
122 authority under Title 13, Chapter 2, Division of Consumer Protection.

123 (2) The attorney general, upon request, shall give legal advice to, and act as counsel for,
124 the division in the exercise of its responsibilities under this chapter.

125 (3) Reasonable attorney's fees, costs, and interest shall be awarded to the division in any
126 action brought to enforce the provisions of this chapter.

127 (4) The division shall on or before November 30, 2008, report to the Business and
128 Labor and Law Enforcement and Criminal Justice Legislative Interim Committees regarding the
129 following activities during the calendar year 2008:

130 (a) the number of meetings held by the board during the year;

131 (b) the number of training sessions conducted by the board under Section 13-32a-112
132 and the number of persons who attended the training;

133 (c) the exemptions requested and exemptions granted by the division under Section
134 13-32a-112.5, including the names and locations of the businesses;

135 (d) the number of enforcement issues considered by the division; and

136 (e) a description of the action taken by the division regarding each enforcement issue.

137 Section 3. Section **13-32a-104** is amended to read:

138 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
139 **items.**

140 (1) Every pawnbroker or secondhand merchandise dealer shall keep a register of each
141 article of property a person pawns or sells to the pawnbroker or secondhand merchandise

142 dealer, except as provided in Subsection 13-32a-102(19)(b) [~~regarding secondhand merchandise~~
143 ~~dealers~~]. Every pawn and secondhand business owner or operator, or his employee, shall enter
144 the following information regarding every article pawned or sold to the owner or employee:

- 145 (a) the date and time of the transaction;
- 146 (b) the pawn transaction ticket number, if the article is pawned;
- 147 (c) the date by which the article must be redeemed;
- 148 (d) the following information regarding the person who pawns or sells the article:
 - 149 (i) the person's name, residence address, and date of birth;
 - 150 (ii) the number of the driver license or other form of positive identification presented by
151 the person, and notations of discrepancies if the person's physical description, including gender,
152 height, weight, race, age, hair color, and eye color, does not correspond with identification
153 provided by the person;
 - 154 (iii) the person's signature; and
 - 155 (iv) a legible fingerprint of the person's right thumb, or if the right thumb cannot be
156 fingerprinted, a legible fingerprint of the person with a written notation identifying the
157 fingerprint and the reason why the thumb print was unavailable;
- 158 (e) the amount loaned on or paid for the article, or the article for which it was traded;
- 159 (f) the identification of the pawn or secondhand business owner or the employee,
160 whoever is making the register entry; and
- 161 (g) an accurate description of the article of property, including available identifying
162 marks such as:
 - 163 (i) names, brand names, numbers, serial numbers, model numbers, color, manufacturers'
164 names, and size;
 - 165 (ii) metallic composition, and any jewels, stones, or glass;
 - 166 (iii) any other marks of identification or indicia of ownership on the article;
 - 167 (iv) the weight of the article, if the payment is based on weight;
 - 168 (v) any other unique identifying feature;
 - 169 (vi) gold content, if indicated; and

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

175 (2) A pawn or secondhand business may not accept any personal property if, upon
176 inspection, it is apparent that serial numbers, model names, or identifying characteristics have
177 been intentionally defaced on that article of property.

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

179 **13-32a-112. Pawnshop and Secondhand Merchandise Advisory Board --**
180 **Membership -- Duties -- Provide training -- Records of compliance -- Rulemaking.**

181 (1) There is created within the division the Pawnshop and Secondhand Merchandise
182 Advisory Board. The board consists of 11 voting members and one nonvoting member:

- 183 (a) one representative of the Utah Chiefs of Police Association;
 - 184 (b) one representative of the Utah Sheriffs Association;
 - 185 (c) one representative of the Statewide Association of Prosecutors;
 - 186 (d) three representatives from the pawnshop industry and three representatives from the
187 secondhand merchandise business industry, who are all appointed by the director of the Utah
188 Commission on Criminal and Juvenile Justice [~~CCJJ~~] and who represent three separate
189 pawnshops, and three separate secondhand merchandise dealers, each of which are owned by a
190 separate person or entity;
 - 191 (e) one law enforcement officer who is appointed by the board members under
192 Subsections (1)(a) through (d);
 - 193 (f) one law enforcement officer whose work regularly involves pawn and secondhand
194 businesses and who is appointed by the board members under Subsections (1)(a) through (d);
195 and
 - 196 (g) one representative from the central database, who is nonvoting.
- 197 (2) (a) The board shall elect one voting member as the chair of the board by a majority

198 of the members present at the board's first meeting each year.

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

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

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

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

205 (4) (a) Each pawn or secondhand business in operation as of January 1 shall ensure one
206 or more persons employed by the pawn or secondhand business each participate in no fewer
207 than four hours of compliance training within that year.

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

210 (5) The board shall monitor and keep a record of the hours of compliance training
211 accrued by each pawn or secondhand business.

212 (6) The board shall provide each pawn or secondhand business with a certificate of
213 compliance upon completion by an employee of the four hours of compliance training under
214 Subsection (4).

215 (7) (a) Each law enforcement agency that has a pawn or secondhand business located
216 within its jurisdiction shall ensure that at least one of its officers completes four hours of
217 compliance training yearly.

218 (b) ~~[This requirement]~~ Subsection (7)(a) does not limit the number of law enforcement
219 officers who attend the compliance training.

220 Section 5. Section **13-32a-112.5** is enacted to read:

221 **13-32a-112.5. Division may exempt certain businesses by rule.**

222 (1) (a) The division may exempt specific classes of businesses from regulation under
223 this chapter by rules made under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

224 (b) The division shall consult with the board in determining which classes of businesses
225 to exempt under this section.

226 (2) Businesses the division may exempt are classes of commercial enterprises clearly
227 defined by administrative rule and that do not involve transactions in property that is recognized
228 by law enforcement as regularly subject to theft and subsequent efforts to pawn or sell.

229 Section 6. Section **13-32a-113** is amended to read:

230 **13-32a-113. Pawnbroker and Secondhand Merchandise Operations Restricted**
231 **Account.**

232 (1) There is created within the General Fund a restricted account known as the
233 Pawnbroker and Secondhand Merchandise Operations Restricted Account.

234 (2) (a) The account shall be funded from the fees and administrative fines imposed and
235 collected under Sections 13-32a-106, 13-32a-107, 13-32a-110, and 13-32a-111. These fees
236 and administrative fines shall be paid to the division, which shall deposit them in the account.

237 (b) The Legislature shall appropriate the funds in this account:

238 (i) to the board for the costs of providing training required under this chapter, costs of
239 the central database created in Section 13-32a-105, and for costs of operation of the board; and

240 (ii) to the division for management of fees and penalties paid under this chapter.

241 (c) The board shall account to the division for expenditures.

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

243 (i) training required under this chapter;

244 (ii) operation of the database;

245 (iii) operation of the board; and

246 (iv) costs of operation of the board.