

PROPERTY TRANSACTION AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Pawnshop and Secondhand Merchandise Transaction Information Act regarding board membership and exemption of certain businesses.

Highlighted Provisions:

This bill:

- ▶ removes the exemption for antique shops;
- ▶ adds an antique shop industry representative to the Pawnshop and Secondhand Merchandise Advisory Board;
- ▶ directs the Division of Consumer Protection to by rule exempt from regulation specific classes of businesses that deal in second hand goods; and
- ▶ directs the division to consult with the board when making the administrative rules to exempt the specified types of businesses that deal in second hand goods.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



28 13-32a-112, as last amended by Laws of Utah 2007, Chapter 352

29 ENACTS:

30 13-32a-112.5, Utah Code Annotated 1953

31

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

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

34 **13-32a-102. Definitions.**

35 As used in this chapter:

36 (1) "Account" means the Pawnbroker [~~and Secondhand Merchandise~~] Operations
37 Restricted Account created in Section 13-32a-113.

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

- 39 (a) that is generally older than 25 years;
- 40 (b) whose value is based on age, rarity, condition, craftsmanship, or collectability;
- 41 (c) that is furniture or other decorative objects produced in a previous time period, as
- 42 distinguished from new items of a similar nature; and
- 43 (d) obtained from auctions, estate sales, other antique shops, and individuals.

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

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

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

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

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

- 54 (a) contains a numerical identifier and a photograph of the person identified; and
- 55 (b) may include a state identification card, a state drivers license, a United States
- 56 military identification card, or a United States passport.

57 (8) "Local law enforcement agency" means the law enforcement agency that has direct
58 responsibility for ensuring compliance with central database reporting requirements for the

59 jurisdiction where the pawnshop is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 personal property, including an antique shop; and

91 (ii) does not function as a pawnbroker.

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

93 [~~(i) the owner or operator of an antique shop;~~]

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

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

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

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

100 (v) the sale or receipt of used merchandise donated to recognized nonprofit, religious,
101 or charitable organizations or any school-sponsored association, and for which no
102 compensation is paid;

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

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

106 (viii) any person or entity offering the personal property of others for sale, purchase,
107 consignment, or trade via the Internet, when that person or entity does not have, and is not
108 required to have, a local business or occupational license or other authorization for this activity;

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

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

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

115 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
116 **items.**

117 (1) Every pawnbroker or secondhand merchandise dealer shall keep a register of each
118 article of property a person pawns or sells to the pawnbroker or secondhand merchandise
119 dealer, except [~~as provided in Subsection 13-32a-102(19)(b) regarding secondhand~~
120 ~~merchandise dealers~~] businesses exempt under Section 13-32a-112.5. Every pawn and

121 secondhand business owner or operator, or his employee, shall enter the following information
122 regarding every article pawned or sold to the owner or employee:

- 123 (a) the date and time of the transaction;
- 124 (b) the pawn transaction ticket number, if the article is pawned;
- 125 (c) the date by which the article must be redeemed;
- 126 (d) the following information regarding the person who pawns or sells the article:
- 127 (i) the person's name, residence address, and date of birth;
- 128 (ii) the number of the driver license or other form of positive identification presented
129 by the person, and notations of discrepancies if the person's physical description, including
130 gender, height, weight, race, age, hair color, and eye color, does not correspond with
131 identification provided by the person;
- 132 (iii) the person's signature; and
- 133 (iv) a legible fingerprint of the person's right thumb, or if the right thumb cannot be
134 fingerprinted, a legible fingerprint of the person with a written notation identifying the
135 fingerprint and the reason why the thumb print was unavailable;
- 136 (e) the amount loaned on or paid for the article, or the article for which it was traded;
- 137 (f) the identification of the pawn or secondhand business owner or the employee,
138 whoever is making the register entry; and
- 139 (g) an accurate description of the article of property, including available identifying
140 marks such as:
- 141 (i) names, brand names, numbers, serial numbers, model numbers, color,
142 manufacturers' names, and size;
- 143 (ii) metallic composition, and any jewels, stones, or glass;
- 144 (iii) any other marks of identification or indicia of ownership on the article;
- 145 (iv) the weight of the article, if the payment is based on weight;
- 146 (v) any other unique identifying feature;
- 147 (vi) gold content, if indicated; and
- 148 (vii) if multiple articles of a similar nature are delivered together in one transaction and
149 the articles do not bear serial or model numbers and do not include precious metals or
150 gemstones, such as musical or video recordings, books, or hand tools, the description of the
151 articles is adequate if it includes the quantity of the articles and a description of the type of

152 articles delivered.

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

156 Section 3. Section **13-32a-112** is amended to read:

157 **13-32a-112. Pawnshop and Secondhand Merchandise Advisory Board --**
158 **Membership -- Duties -- Provide training -- Records of compliance -- Rulemaking.**

159 (1) There is created within the division the Pawnshop and Secondhand Merchandise
160 Advisory Board. The board consists of [~~+~~] 12 voting members and one nonvoting member:

- 161 (a) one representative of the Utah Chiefs of Police Association;
- 162 (b) one representative of the Utah Sheriffs Association;
- 163 (c) one representative of the Statewide Association of Prosecutors;
- 164 (d) three representatives from the pawnshop industry and three representatives from the
165 secondhand merchandise business industry, who are all appointed by the director of the Utah
166 Commission on Criminal and Juvenile Justice [~~CCJJ~~] and who represent three separate
167 pawnshops, and three separate secondhand merchandise dealers, each of which are owned by a
168 separate person or entity;

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

171 (f) one representative of the antique shop industry;

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

175 [~~g~~] (h) one representative from the central database, who is nonvoting.

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

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

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

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

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

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

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

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

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

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

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

199 Section 4. Section **13-32a-112.5** is enacted to read:

200 **13-32a-112.5. Division may exempt certain businesses by rule.**

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

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

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

Legislative Review Note
as of 1-9-08 1:03 PM

Office of Legislative Research and General Counsel

H.B. 192 - Property Transaction Amendments

**Revised
Fiscal Note**

2008 General Session
State of Utah

State Impact

Enactment of this bill will generate additional revenue to the Pawnbroker Operations Fund of \$12,500 in FY 2009 and \$12,500 in FY 2010.

| | <u>FY 2008 Approp.</u> | <u>FY 2009 Approp.</u> | <u>FY 2010 Approp.</u> | <u>FY 2008 Revenue</u> | <u>FY 2009 Revenue</u> | <u>FY 2010 Revenue</u> |
|------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Restricted Funds | \$0 | \$0 | \$0 | \$0 | \$12,500 | \$12,500 |
| Total | \$0 | \$0 | \$0 | \$0 | \$12,500 | \$12,500 |

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Businesses may be affected by this change in statute.