

PROPERTY TRANSACTION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Secondhand Merchandise Transaction Information Act by providing that scrap and secondary metals dealers are exempt from the act and providing transaction and record keeping provisions regarding precious metals and coins.

Highlighted Provisions:

This bill:

- ▶ amends the definition of a secondhand business to provide an exemption for regulated metal dealers;
- ▶ requires reporting to the database of certain transactions by coin dealers;
- ▶ modifies the Pawnbroker and Secondhand Merchandise Advisory Board to include a coin dealer representative;
- ▶ provides definitions related to the coin dealer business;
- ▶ provides a criminal penalty for unauthorized release of database information;
- ▶ provides that neither coin dealers nor pawnbrokers are required to hold precious metals or coins as defined; and
- ▶ changes the hold period for pawnbrokers and secondhand dealers from ten days to 15 days.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 This bill takes effect on July 1, 2009.

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 13-32a-102, as last amended by Laws of Utah 2008, Chapter 333
- 33 13-32a-102.5, as last amended by Laws of Utah 2008, Chapter 333
- 34 13-32a-105, as last amended by Laws of Utah 2007, Chapter 352
- 35 13-32a-106.5, as last amended by Laws of Utah 2008, Chapter 382
- 36 13-32a-108, as last amended by Laws of Utah 2007, Chapter 352
- 37 13-32a-109, as last amended by Laws of Utah 2007, Chapter 352
- 38 13-32a-109.5, as enacted by Laws of Utah 2006, Chapter 290
- 39 13-32a-109.8, as last amended by Laws of Utah 2007, Chapter 352
- 40 13-32a-110, as last amended by Laws of Utah 2005, Chapter 256
- 41 13-32a-111, as last amended by Laws of Utah 2008, Chapter 382
- 42 13-32a-112, as last amended by Laws of Utah 2008, Chapter 333
- 43 13-32a-113, as last amended by Laws of Utah 2008, Chapter 333
- 44 76-6-408, as last amended by Laws of Utah 2004, Chapter 299

45 ENACTS:

- 46 13-32a-103.5, Utah Code Annotated 1953
- 47 13-32a-104.5, Utah Code Annotated 1953



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

50 Section 1. 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 (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board
64 created by this chapter.

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

67 (6) "Coin" means a piece of currency, usually metallic and usually in the shape of a
68 disc that is:

69 (a) stamped metal, and issued by a government as monetary currency; or

70 (b) (i) worth more than its current value as currency; and

71 (ii) worth more than its metal content value.

72 (7) "Coin dealer" means a person or business whose sole business activity is the selling
73 and purchasing of coins and precious metals.

74 (8) "Commercial grade precious metals" or "precious metals" means ingots, monetized
75 bullion, art bars, medallions, medals, tokens, and currency that are marked by the refiner or
76 fabricator indicating their fineness and include:

77 (a) .99 fine or finer ingots of gold, silver, platinum, palladium, or other precious
78 metals; or

79 (b) .925 fine sterling silver ingots, art bars, and medallions.

80 ~~[(6)]~~ (9) "Division" means the Division of Consumer Protection in Title 13, Chapter 1,
81 Department of Commerce.

82 ~~[(7)]~~ (10) "Identification" means a form of positive identification issued by a
83 governmental entity and that:

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

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

87 ~~[(8)]~~ (11) "Local law enforcement agency" means the law enforcement agency that has
88 direct responsibility for ensuring compliance with central database reporting requirements for
89 the jurisdiction where the pawnshop or secondhand business is located.

90 ~~[(9)]~~ (12) "Misappropriated" means stolen, embezzled, converted, obtained by theft, or
91 otherwise appropriated without authority of the lawful owner.

92 ~~[(10)]~~ (13) "Original victim" means a victim who is not a party to the pawn or sale
93 transaction.

94 ~~[(11)]~~ (14) "Pawnbroker" means a person whose business engages in the following
95 activities:

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

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

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

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

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

105 ~~[(12)]~~ (15) "Pawn and secondhand business" means any business operated by a
106 pawnbroker or secondhand merchandise dealer, or the owner or operator of the business.

107 ~~[(13)]~~ (16) "Pawn ticket" means a document upon which information regarding a pawn
108 transaction is entered when the pawn transaction is made.

109 ~~[(14)]~~ (17) "Pawn transaction" means an extension of credit in which an individual
110 delivers property to a pawnbroker for an advance of money and retains the right to redeem the
111 property for the redemption price within a fixed period of time.

112 ~~[(15)]~~ (18) "Pawnshop" means the physical location or premises where a pawnbroker
113 conducts business.

114 ~~[(16)]~~ (19) "Pledgor" means a person who conducts a pawn transaction with a
115 pawnshop.

116 ~~[(17)]~~ (20) "Property" means any tangible personal property.

117 ~~[(18)]~~ (21) "Register" means the record of information required under this chapter to be
118 maintained by pawn and secondhand businesses. The register is an electronic record that is in a
119 format that is compatible with the central database.

120 (22) "Scrap jewelry" means any item purchased solely:

- 121 (a) for its gold, silver, or platinum content; and
122 (b) for the purpose of reuse of the metal content.
123 [~~19~~] (23) (a) "Secondhand merchandise dealer" means an owner or operator of a
124 business that:
125 (i) deals in the purchase, exchange, or sale of used or secondhand merchandise or
126 personal property; and
127 (ii) does not function as a pawnbroker.
128 (b) "Secondhand merchandise dealer" does not include:
129 (i) the owner or operator of an antique shop;
130 (ii) any class of businesses exempt by administrative rule under Section 13-32a-112.5;
131 (iii) any person or entity who operates auction houses, flea markets, or vehicle, vessel,
132 and outboard motor dealers as defined in Section 41-1a-102;
133 (iv) the sale of secondhand goods at events commonly known as "garage sales," "yard
134 sales," or "estate sales";
135 (v) the sale or receipt of secondhand books, magazines, or post cards;
136 (vi) the sale or receipt of used merchandise donated to recognized nonprofit, religious,
137 or charitable organizations or any school-sponsored association, and for which no
138 compensation is paid;
139 (vii) the sale or receipt of secondhand clothing and shoes;
140 (viii) any person offering his own personal property for sale, purchase, consignment, or
141 trade via the Internet;
142 (ix) any person or entity offering the personal property of others for sale, purchase,
143 consignment, or trade via the Internet, when that person or entity does not have, and is not
144 required to have, a local business or occupational license or other authorization for this activity;
145 (x) any owner or operator of a retail business that receives used merchandise as a
146 trade-in for similar new merchandise; [~~or~~]
147 (xi) an owner or operator of a business that contracts with other persons or entities to
148 offer those persons' secondhand goods for sale, purchase, consignment, or trade via the
149 Internet[.];
150 (xii) any dealer as defined in Section 76-10-901, which concerns scrap metal and
151 secondary metals; or

- 152 (xiii) the purchase of items in bulk that are:
- 153 (A) sold at wholesale in bulk packaging;
- 154 (B) sold by a person licensed to conduct business in Utah; and
- 155 (C) regularly sold in bulk quantities as a recognized form of sale.

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

157 **13-32a-102.5. Administration and enforcement.**

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

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

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

164 ~~[(4) The division shall on or before November 30, 2008, report to the Business and
165 Labor and Law Enforcement and Criminal Justice Legislative Interim Committees regarding
166 the following activities during the calendar year 2008:]~~

167 ~~[(a) the number of meetings held by the board during the year;]~~

168 ~~[(b) the number of training sessions conducted by the board under Section 13-32a-112
169 and the number of persons who attended the training;]~~

170 ~~[(c) the exemptions requested and exemptions granted by the division under Section
171 13-32a-112.5, including the names and locations of the businesses;]~~

172 ~~[(d) the number of enforcement issues considered by the division; and]~~

173 ~~[(e) a description of the action taken by the division regarding each enforcement issue.]~~

174 Section 3. Section **13-32a-103.5** is enacted to read:

175 **13-32a-103.5. Applicability to coin dealers.**

176 This chapter applies to coin dealers, except where provisions otherwise specifically
177 address coin dealers.

178 Section 4. Section **13-32a-104.5** is enacted to read:

179 **13-32a-104.5. Database information from coin dealers -- New and prior**
180 **customers.**

181 (1) A coin dealer shall maintain in a register and provide for the database the
182 information under this section for each transaction of a coin or precious metal with a person

183 with whom the coin dealer has not previously conducted a transaction.

184 (2) For transactions under Subsection (1), the coin dealer or the coin dealer's employee
185 shall enter the following information in the register regarding every coin or precious metal
186 transaction:

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

188 (b) the receipt number;

189 (c) the following information regarding the person who sells the coin or precious
190 metal:

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

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

196 (iii) the person's signature; and

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

200 (d) the amount paid for the article, or the article for which it was traded;

201 (e) the identification of the coin dealer or the employee who is conducting the
202 transaction; and

203 (f) an accurate description of the coin or precious metal, including available identifying
204 marks such as:

205 (i) type and name of coin or type and content of precious metal;

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

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

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

209 (v) any other unique identifying feature; and

210 (vi) metallic content.

211 (3) If multiple coins or precious metals in an amount that would make reporting of
212 each item unreasonably difficult are part of a single sale transaction, a general description of
213 the items and a photograph of the items, which shall be stored by the coin dealer with a copy of

214 the invoice of the transaction for three years from the date of the transaction.

215 (4) If the person selling a coin or precious metal to the coin dealer has an established
216 previous transaction history with the coin dealer, the coin dealer or the coin dealer's employee
217 shall enter the following information in the register:

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

219 (b) indication that the coin dealer has conducted business with the seller previously;

220 (c) the identification of the coin dealer or the employee who is conducting the
221 transaction;

222 (d) the initials of the seller's legal name, including any middle name;

223 (e) form of identification presented by the seller at the time of sale;

224 (f) the last four digits of the unique identifying number on the form of identification;

225 and

226 (g) the identifying information under Subsection (2)(f) and under Subsection (3) as
227 applicable.

228 (5) A coin dealer may not accept any coin or precious metal if, upon inspection, it is
229 apparent that serial numbers or identifying characteristics have been intentionally defaced on
230 that coin or precious metal.

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

232 **13-32a-105. Central database.**

233 (1) There is created under this section a central database as a statewide repository for
234 all information pawn and secondhand businesses and coin dealers are required to submit in
235 accordance with this chapter and for the use of all participating law enforcement agencies
236 whose jurisdictions include one or more pawn or secondhand businesses.

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

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

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

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

244 (4) (a) Any entity submitting a bid to create, maintain, and operate the database

245 pursuant to the request for proposal conducted by the Division of Purchasing and General
246 Services may not hold any financial or operating interest in any pawnshop in any state.

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

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

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

255 Section 6. Section **13-32a-106.5** is amended to read:

256 **13-32a-106.5. Confidentiality of pawn and purchase transactions.**

257 (1) All pawn and purchase transaction records delivered to a local law enforcement
258 official or transmitted to the central database pursuant to Section 13-32a-106 are protected
259 records under Section 63G-2-305. These records may be used only by law enforcement
260 officials and the division and only for the law enforcement and administrative enforcement
261 purposes of:

262 (a) investigating possible criminal conduct involving the property delivered to the
263 pawnbroker or secondhand business in a pawn or purchase transaction;

264 (b) investigating a [~~pawnbroker's~~] possible violation of the record keeping or reporting
265 requirements of this chapter when the local law enforcement official, based on a review of the
266 records and information received, has reason to believe that a violation has occurred;

267 (c) responding to an inquiry from a person claiming ownership of described property
268 by searching the database to determine if property matching the description has been delivered
269 to a pawnbroker or secondhand business by another person in a pawn or purchase transaction
270 and if so, obtaining from the database:

271 (i) a description of the property;

272 (ii) the name and address of the pawnbroker or secondhand business who received the
273 property; and

274 (iii) the name, address, and date of birth of the conveying person; and

275 (d) [~~take~~] taking enforcement action under Section 13-2-5 against a pawnbroker or

276 secondhand business.

277 (2) (a) A person may not knowingly and intentionally use, release, publish, or
278 otherwise make available to any person or entity any information obtained from the database
279 for any purpose other than those specified in Subsection (1).

280 (b) Each separate violation of Subsection (2)(a) is a class B misdemeanor.

281 ~~[(b)]~~ (c) Each separate violation of ~~[this]~~ Subsection (2)(a) is subject to a civil penalty
282 not to exceed \$250.

283 Section 7. Section **13-32a-108** is amended to read:

284 **13-32a-108. Retention of records -- Reasonable inspection.**

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

287 (2) (a) A law enforcement agency may conduct random reasonable inspections of pawn
288 or secondhand businesses for the purpose of monitoring compliance with the reporting
289 requirements of this chapter. The inspections may be conducted to:

290 (i) confirm that pawned or sold items match the description reported to the database by
291 the pawnshop; and

292 (ii) make spot checks of property at the pawn or secondhand business to determine if
293 the property is appropriately reported.

294 (b) Inspections under Subsection (2)(a) shall be performed during the regular business
295 hours of the pawn or secondhand business.

296 Section 8. Section **13-32a-109** is amended to read:

297 **13-32a-109. Holding period for articles.**

298 (1) (a) The pawnbroker may sell any article pawned to ~~[him]~~ the pawnbroker:

299 (i) after the expiration of the contract period between the pawnbroker and the pledgor;
300 and

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

303 (b) If an article, including scrap jewelry, is purchased by ~~[the]~~ a pawn or secondhand
304 business~~[-]~~ or a coin dealer, the pawn or secondhand business or coin dealer may sell the article
305 after the pawn or secondhand business or coin dealer has held the article for ~~[ten]~~ 15 days and
306 complied with the requirements of Section 13-32a-106 regarding reporting to the central

307 database and Section 13-32a-103[-], except that pawn, secondhand, and coin dealer businesses
308 are not required to hold precious metals or coins under this Subsection (1)(b).

309 (c) This Subsection (1) does not preclude a law enforcement agency from requiring a
310 pawn or secondhand business to hold an article if necessary in the course of an investigation.

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

313 (ii) If the article was sold to the pawn or secondhand business, the law enforcement
314 agency may require the article be held if the pawn or secondhand business has not sold the
315 article.

316 (d) If the law enforcement agency requesting a hold on property under this Subsection
317 (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify
318 the local law enforcement agency of the request and also the pawn or secondhand business.

319 (2) If a law enforcement agency requires the pawn or secondhand business to hold an
320 article as part of an investigation, the agency shall provide to the pawn or secondhand business
321 a hold ticket issued by the agency, which:

322 (a) states the active case number;

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

324 (c) facilitates the ability of the pawn or secondhand business to track the article when
325 the prosecution takes over the case.

326 (3) If an article is not seized by a law enforcement agency that has placed a hold on the
327 property, the property may remain in the custody of the pawn or secondhand business until
328 further disposition by the law enforcement agency, and as consistent with this chapter.

329 (4) The initial hold by a law enforcement agency is for a period of [~~45~~] 90 days. If the
330 article is not seized by the law enforcement agency, the article shall remain in the custody of
331 the pawn or secondhand business and is subject to the hold unless exigent circumstances
332 require the purchased or pawned article to be seized by the law enforcement agency.

333 (5) (a) A law enforcement agency may extend any hold for up to an additional [~~45~~] 90
334 days when exigent circumstances require the extension.

335 (b) When there is an extension of a hold under Subsection (5)(a), the requesting law
336 enforcement agency shall notify the pawn or secondhand business that is subject to the hold
337 prior to the expiration of the initial [~~45~~] 90 days.

338 (c) A law enforcement agency may not hold an item for more than the [90] 180 days
339 allowed under Subsections (5)(a) and (b) without obtaining a court order authorizing the hold.

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

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

344 (a) notify the pawn or secondhand business in writing that the hold or seizure has been
345 terminated;

346 (b) return the article subject to the seizure to the pawn or secondhand business; or

347 (c) if the article is not returned to the pawn or secondhand business, advise the pawn or
348 secondhand business either in writing or electronically of the specific alternative disposition of
349 the article.

350 Section 9. Section **13-32a-109.5** is amended to read:

351 **13-32a-109.5. Seizure of property.**

352 (1) If a law enforcement agency determines seizure of pawned or sold property is
353 necessary during the course of a criminal investigation in addition to the holding provisions
354 under Section 13-32a-109, the law enforcement agency shall:

355 (a) notify the pawnshop of the specific item to be seized;

356 (b) issue to the pawnshop a seizure ticket in a form approved by the division and that:

357 (i) provides the active case number related to the item to be seized;

358 (ii) provides the date of the seizure request;

359 (iii) describes the article to be seized; and

360 (iv) includes any information that facilitates the pawnbroker's ability to track the article
361 when the prosecution agency takes over the case.

362 (2) If the law enforcement agency seizing the pawned or sold property is not the local
363 law enforcement agency, the seizing agency shall, in addition to compliance with Subsection

364 (1):

365 (a) notify the local law enforcement agency prior to any seizure; and

366 (b) facilitate the seizure of the pawned property in cooperation with the local law
367 enforcement agency to provide the pawnshop or secondhand business the ability to monitor the
368 proceedings under Section 13-32a-109.8.

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

370 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

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

373 (a) request restitution to the pawn or secondhand business for the crimes perpetrated
374 against the pawn or secondhand business as a victim of theft by deception; and

375 (b) request restitution for the original victim.

376 (2) If the original victim of the theft of the property files a police report and the
377 property is subsequently located at a pawn or secondhand business, the victim must fully
378 cooperate with the prosecution of the crimes perpetrated against the pawn or secondhand
379 business as a victim of theft by deception, in order to qualify for restitution regarding the
380 property.

381 (3) If the original victim does not pursue criminal charges or does not cooperate in the
382 prosecution of the property theft crimes charged against the defendant and the theft by
383 deception charges committed against the pawn or secondhand business, then the original victim
384 must pay to the pawn or secondhand business the amount of money financed or paid by the
385 pawn or secondhand business to the defendant in order to obtain the property.

386 (4) (a) The victim's cooperation in the prosecution of the property crimes and in the
387 prosecution of the theft by deception offense committed against the pawn or secondhand
388 business suspends the requirements of Subsections (2) and (3).

389 (b) If the victim cooperates in the prosecution under Subsection (4)(a) and the
390 defendants are convicted, the prosecuting agency shall direct the pawn or secondhand business
391 to turn over the property to the victim.

392 (c) Upon receipt of notice from the prosecuting agency that the property must be turned
393 over to the victim, the pawn or secondhand business shall return the property to the victim as
394 soon as reasonably possible.

395 (5) A pawn or secondhand business must fully cooperate in the prosecution of the
396 property crimes committed against the original victim and the property crime of theft by
397 deception committed against the pawn or secondhand business in order to participate in any
398 court-ordered restitution.

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

400 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or
401 secondhand business subject to the hold unless a pawned or sold article has been seized by the
402 law enforcement agency pursuant to Section 13-32a-109.5.

403 Section 11. Section **13-32a-110** is amended to read:

404 **13-32a-110. Penalties.**

405 (1) A violation of any of the following sections is subject to a civil penalty of not more
406 than \$500:

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

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

409 (c) Section 13-32a-108, retention of records; [~~or~~]

410 (d) Section 13-32a-109, holding period for pawned articles[-];

411 (e) Section 13-32a-111, payment of fees as required; or

412 (f) Section 13-32a-112, training requirements for pawn, secondhand, and coin dealer
413 business employees and officers of participating law enforcement agencies.

414 (2) This section does not prohibit civil action by a governmental entity regarding the
415 pawnbroker's business operation or licenses.

416 Section 12. Section **13-32a-111** is amended to read:

417 **13-32a-111. Fees to fund training and central database.**

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

420 (b) For the period of July 1, 2009 through December 31, 2009, each coin dealer in
421 operation shall pay a fee of \$250 to the division to be deposited in the account.

422 (c) On and after January 1, 2010, each coin dealer in operation shall annually on
423 January 1 pay \$250 to the division to be deposited in the account.

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

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

430 (4) (a) If a law enforcement agency outside Utah requests access to the central

431 database, the requesting agency shall pay a yearly fee of \$750 for the fiscal year beginning July
432 1, 2006, which shall be deposited in the account.

433 (b) The board may establish the fee amount for fiscal years beginning on and after July
434 1, 2007 under Section 63J-1-303.

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

436 **13-32a-112. Secondhand Merchandise Advisory Board -- Membership -- Duties --**
437 **Provide training -- Records of compliance -- Training compliance -- Rulemaking.**

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

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

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

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

443 (d) three representatives from the pawnshop industry [~~and three~~], two representatives
444 from the secondhand merchandise business industry, and one representative from the coin
445 dealer industry who are all appointed by the director of the Utah Commission on Criminal and
446 Juvenile Justice and who represent three separate pawnshops, [~~and three~~] two separate
447 secondhand merchandise dealers, and one coin dealer, each of which are owned by a separate
448 person or entity;

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

451 (f) one law enforcement officer whose work regularly involves pawn and secondhand
452 businesses and who is appointed by the board members under Subsections (1)(a) through (d);
453 and

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

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

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

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

459 (3) (a) The board shall conduct quarterly training sessions regarding compliance with
460 this chapter and other applicable state laws for any person who owns or is employed by a pawn
461 or secondhand business subject to this chapter.

462 (b) Each training session shall provide [~~not~~] no fewer than two hours of training.

463 (4) (a) Each pawn [~~or~~], secondhand, and coin dealer business in operation as of January
464 1 shall ensure one or more persons employed by the pawn or secondhand business each
465 participate in no fewer than [~~four~~] two hours of compliance training within that year.

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

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

470 (6) The board shall provide each pawn or secondhand business with a certificate of
471 compliance upon completion by an employee of the [~~four~~] two hours of compliance training
472 under Subsection (4).

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

476 (b) Subsection (7)(a) does not limit the number of law enforcement officers who attend
477 the compliance training.

478 Section 14. Section **13-32a-113** is amended to read:

479 **13-32a-113. Secondhand Merchandise Operations Restricted Account.**

480 (1) There is created within the General Fund a restricted account known as the
481 [~~Pawnbroker and~~] Secondhand Merchandise Operations Restricted Account.

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

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

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

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

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

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

491 (i) training required under this chapter;

492 (ii) operation of the database; and

493 (iii) operation of the board[~~;~~and].

494 [~~(iv) costs of operation of the board.~~]

495 Section 15. Section **76-6-408** is amended to read:

496 **76-6-408. Receiving stolen property -- Duties of pawnbrokers, secondhand**
497 **businesses, and coin dealers.**

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

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

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

505 (b) has received other stolen property within the year preceding the receiving offense
506 charged; ~~or~~

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

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

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

514 (iii) provide at least one positive form of identification[~~;~~]; or

515 (d) is a coin dealer or an employee of the coin dealer as defined in Section 13-32a-102
516 who does not comply with the requirements of Section 13-32a-104.5.

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

522 (4) When, in a prosecution under this section, it appears from the evidence that the
523 defendant was a pawnbroker or a person who has or operates a business dealing in or collecting

524 used or secondhand merchandise or personal property, or was an agent, employee, or
525 representative of a pawnbroker or person, that the defendant bought, received, concealed, or
526 withheld the property without obtaining the information required in Subsection (2)(c) or (2)(d),
527 then the burden shall be upon the defendant to show that the property bought, received, or
528 obtained was not stolen.

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

531 (6) As used in this section:

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

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

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

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

540 (iii) receives personal property in exchange for money or in trade for other personal
541 property.

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

544 Section 16. **Effective date.**

545 This bill takes effect on July 1, 2009.

Legislative Review Note
as of 2-17-09 12:22 PM

Office of Legislative Research and General Counsel

H.B. 163 - Property Transaction Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill would generate additional revenue to the General Fund of \$2,500 in FY 2010 and \$2,500 in FY 2011. Commerce Service Fund spending affects the annual transfer to the General Fund.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$2,500	\$2,500
Total	\$0	\$0	\$0	\$0	\$2,500	\$2,500

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. Some businesses may be impacted due to this proposed change in statute.