

**Representative Jennifer M. Seelig** proposes the following substitute bill:

**PAWNSHOP AND SECONDHAND MERCHANDISE  
TRANSACTION INFORMATION ACT AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer M. Seelig**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Commerce and Trade Code relating to the Pawnshop and Secondhand Merchandise Transaction Information Act.

**Highlighted Provisions:**

This bill:

► requires a law enforcement agency to respond to a registered or certified letter from a pawn or secondhand business regarding an expired hold within 30 days by either:

- confirming the expiration of the holding period and releasing the hold; or
- providing written notice to the pawn or secondhand business that a court order

has continued the period of time the item must be held;

► provides procedures for law enforcement to give the written notice;

► provides that if a law enforcement agency fails to respond the registered or certified mail within 30 days, the pawn or secondhand business may treat the item as if acquired in the ordinary course of business;

► adds the requirement that the article be required during the course of a criminal investigation when a law enforcement agency determines that seizure of pawned or sold property is necessary; and



26           ▶ requires a pawnshop or secondhand business to retain possession of an item until  
 27 the resolution of the criminal adjudication or investigation, unless ~~it~~ → [:  
 28 ~~the item has been held for 180 days and the holding period has lapsed and no~~  
 29 [~~the item has been held for 180 days and the holding period has lapsed and no~~  
 30 ~~person has been charged]~~ . ← ~~it~~

31 **Money Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **13-32a-109**, as last amended by Laws of Utah 2009, Chapter 272

38           **13-32a-109.5**, as last amended by Laws of Utah 2009, Chapter 272

39           **13-32a-109.8**, as last amended by Laws of Utah 2010, Chapter 378

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

42           Section 1. Section **13-32a-109** is amended to read:

43           **13-32a-109. Holding period for articles.**

44           (1) (a) The pawnbroker may sell any article pawned to the pawnbroker:

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

46           and

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

49           (b) If an article, including scrap jewelry, is purchased by a pawn or secondhand  
 50 business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article  
 51 after the pawn or secondhand business or coin dealer has held the article for 15 days and  
 52 complied with the requirements of Section 13-32a-106 regarding reporting to the central  
 53 database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are  
 54 not required to hold precious metals or coins under this Subsection (1)(b).

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

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

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

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

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

68 (a) states the active case number;

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

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

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

75 (4) The initial hold by a law enforcement agency is for a period of 90 days. If the  
76 article is not seized by the law enforcement agency, the article shall remain in the custody of  
77 the pawn or secondhand business and is subject to the hold unless exigent circumstances  
78 require the purchased or pawned article to be seized by the law enforcement agency.

79 (5) (a) A law enforcement agency may extend any hold for up to an additional 90 days  
80 when exigent circumstances require the extension.

81 (b) When there is an extension of a hold under Subsection (5)(a), the requesting law  
82 enforcement agency shall notify the pawn or secondhand business that is subject to the hold  
83 prior to the expiration of the initial 90 days.

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

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

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

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

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

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

96 (8) If the law enforcement agency does not notify the pawn or secondhand business  
97 that a hold on an item has expired, the pawn or secondhand business shall send a letter by  
98 registered or certified United States mail to the law enforcement agency that ordered the hold  
99 and inform the agency that the holding period has expired. The law enforcement agency shall  
100 respond within 30 days by:

101 (a) confirming that the holding period has expired and that the pawn or secondhand  
102 business may manage the item as if acquired in the ordinary course of business; or

103 (b) providing written notice to the pawn or secondhand business that a court order has  
104 continued the period of time for which the item shall be held.

105 (9) The written notice under Subsection (8)(b) is considered provided when:

106 (a) personally delivered to the pawn or secondhand business with a signed receipt of  
107 delivery;

108 (b) delivered to the pawn or secondhand business by registered or certified United  
109 States mail; or

110 (c) delivered by any other means with the mutual assent of the law enforcement agency  
111 and the pawn or secondhand business.

112 (10) If the law enforcement agency does not respond within 30 days under Subsection  
113 (8), the pawn or secondhand business may manage the item as if acquired in the ordinary  
114 course of business.

115 Section 2. Section **13-32a-109.5** is amended to read:

116 **13-32a-109.5. Seizure of property.**

117 (1) If a law enforcement agency determines seizure of pawned or sold property is  
118 necessary under Section 13-32a-109.8 during the course of a criminal investigation in addition

119 to the holding provisions under Section 13-32a-109, the law enforcement agency shall:

- 120 (a) notify the pawnshop of the specific item to be seized;
- 121 (b) issue to the pawnshop a seizure ticket in a form approved by the division and that:
  - 122 (i) provides the active case number related to the item to be seized;
  - 123 (ii) provides the date of the seizure request;
  - 124 (iii) provides the reason for the seizure under Section 13-32a-109.8;
  - 125 [~~(iii)~~] (iv) describes the article to be seized; [~~and~~]
  - 126 (v) states each reason the article is necessary during the course of a criminal
  - 127 investigation under Section 13-32A-109.8; and
  - 128 [~~(iv)~~] (vi) includes any information that facilitates the pawnbroker's ability to track the
  - 129 article when the prosecution agency takes over the case.

130 (2) If the purpose for the seizure of an article under this section is terminated before  
 131 final disposition of the criminal case and the property is no longer needed as evidence, the law  
 132 enforcement agency that required the seizure shall within 15 days after the property is no  
 133 longer needed as evidence:

134 (a) notify the pawn or secondhand business in writing that the purpose for the seizure  
 135 has been terminated and the property is available for return to the pawn or secondhand  
 136 business; or

137 (b) return the article to the pawn or secondhand business.

138 [~~(2)~~] (3) If the law enforcement agency seizing the pawned or sold property is not the  
 139 local law enforcement agency, the seizing agency shall, in addition to compliance with  
 140 Subsection (1):

- 141 (a) notify the local law enforcement agency prior to any seizure; and
- 142 (b) facilitate the seizure of the pawned property in cooperation with the local law
- 143 enforcement agency to provide the pawnshop or secondhand business the ability to monitor the
- 144 proceedings under Section 13-32a-109.8.

145 Section 3. Section **13-32a-109.8** is amended to read:

146 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

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

- 149 (a) request restitution to the pawn or secondhand business for the crimes perpetrated

150 against the pawn or secondhand business as a victim of theft by deception; and

151 (b) request restitution for the original victim.

152 (2) If the original victim of the theft of the property files a police report and the  
153 property is subsequently located at a pawn or secondhand business, the victim shall fully  
154 cooperate with the prosecution of the crimes perpetrated against the pawn or secondhand  
155 business as a victim of theft by deception, in order to qualify for restitution regarding the  
156 property.

157 (3) If the original victim does not pursue criminal charges or does not cooperate in the  
158 prosecution of the property theft crimes charged against the defendant and the theft by  
159 deception charges committed against the pawn or secondhand business, then the original victim  
160 shall pay to the pawn or secondhand business the amount of money financed or paid by the  
161 pawn or secondhand business to the defendant in order to obtain the property.

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

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

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

171 (5) The pawnshop or secondhand business shall retain possession of the item until the  
172 resolution of the criminal adjudication or investigation, unless ~~H→~~ [‡

173 ~~— (a) necessary]~~ ~~←H~~ during the course of a criminal investigation ~~H→~~ [and] the ~~←H~~

173a actual physical

174 possession ~~H→~~ by law enforcement ~~←H~~ of an article purchased or pawned is essential ~~H→~~ [to a

174a law enforcement] for the ~~←H~~ purpose of:

175 ~~H→~~ [(i)] (a) ←H fingerprinting of an article;

176 ~~H→~~ [(ii)] (b) ←H chemical testing of an article;

177 ~~H→~~ [(iii)] (c) ←H use of an article as an exhibit at trial, as authorized by the prosecutor; or

178 ~~H→~~ [(iv)] (d) ←H if the article contains unique or sensitive personal identifying

178a information; or

179 ~~H→~~ [(b) the item has been held for a period of 180 days, the holding period has lapsed, and

180 no one has been formally charged or indicted.] ←H

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**1st Sub. (Buff) H.B. 337**

181            [~~5~~] (6) A pawn or secondhand business shall fully cooperate in the prosecution of the  
182 property crimes committed against the original victim and the property crime of theft by  
183 deception committed against the pawn or secondhand business in order to participate in any  
184 court-ordered restitution.

185            [~~6~~] (7) At all times during the course of a criminal investigation and subsequent  
186 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or  
187 secondhand business subject to the hold unless a pawned or sold article has been seized by the  
188 law enforcement agency pursuant to Section 13-32a-109.5.



# FISCAL NOTE

H.B. 337 1st Sub. (Buff)

SHORT TITLE: **Pawnshop and Secondhand Merchandise Transaction Information Act  
Amendments**

SPONSOR: **Seelig, J.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.