

HB0337S01 compared with HB0337

~~{deleted text}~~ shows text that was in HB0337 but was deleted in HB0337S01.

inserted text shows text that was not in HB0337 but was inserted into HB0337S01.

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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: _____

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:

- ~~{~~ → provides that when law enforcement places a hold on an article, but does not seize the article, the article shall remain in the custody of the pawn or secondhand business until there is a disposition of the case;
- ‡ ▶ 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:

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- 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;
- ▶ ~~{defines when a pawned or purchased article is necessary}~~ 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~~;~~
- ~~modifies procedures for return of an item to a pawn}~~ when a law enforcement agency determines that seizure of pawned or sold property is necessary; and
- ▶ requires a pawnshop or secondhand business ~~{if the article is no longer needed for law enforcement purposes;~~
- ~~provides procedures for a victim who unknowingly pawns a stolen item; and~~
- ~~provides procedures for returning an article to a victim when the perpetrator is known and when the perpetrator is not known.~~ to retain possession of an item until the resolution of the criminal adjudication or investigation, unless:
 - the course of the criminal investigation requires the seizure of the item; or
 - the item has been held for 180 days and the holding period has lapsed and no person has been charged

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

~~{~~ ~~77-24-2, as last amended by Laws of Utah 2005, Chapter 126~~

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

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

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

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

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

and

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

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

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

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

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

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

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

(a) states the active case number;

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

(c) facilitates the ability of the pawn or secondhand business to track the article when

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the prosecution takes over the case.

(3) If an article is not seized by a law enforcement agency that has placed a hold on the property, the property ~~[may]~~ shall remain in the custody of the pawn or secondhand business until ~~{ }~~ further ~~{ }~~ ~~there is a~~ disposition ~~{ }~~ by the law enforcement agency, and as ~~{ }~~ consistent with this chapter ~~{ and Title 77, Chapter 24, Disposal of Property Received by Peace Officer }~~.

(4) The initial hold by a law enforcement agency is for a period of 90 days. ~~{ }~~ If the article is not seized by the law enforcement agency, the ~~{ } A purchased or pawned~~ article shall remain in the custody of the pawn or secondhand business and is subject to the hold ~~{ }~~ unless exigent circumstances require the purchased or pawned article to be seized by the law enforcement agency ~~{ }, except as provided in Section 13-32a-109.5 }~~.

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

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

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

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

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

(a) notify the pawn or secondhand business in writing that the hold or seizure has been terminated; ~~{ or }~~

~~{ }~~ (b) return the article subject to the seizure to the pawn or secondhand business; or ~~{ }~~

~~{ }~~ (c) if the article is not returned to the pawn or secondhand business, ~~{ }~~ ~~(b) }~~ advise the pawn or secondhand business either in writing or electronically of the specific alternative disposition of the article.

(8) If the law enforcement agency does not notify the pawn or secondhand business that a hold on an item has expired, the pawn or secondhand business shall send a letter by

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registered or certified United States mail to the law enforcement agency that ordered the hold and inform the agency that the holding period has expired. The law enforcement agency shall respond within 30 days by:

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

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

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

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

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

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

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

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

13-32a-109.5. Seizure of property.

~~{ (1) As used in this section "necessary during the course of a criminal investigation" means that actual physical possession of an article purchased or pawned is essential to a law enforcement purpose, including:~~

~~— (a) fingerprinting of an article;~~

~~— (b) chemical testing of an article;~~

~~— (c) use of an article as an exhibit at trial, as authorized by the prosecutor; or~~

~~— (d) if the article contains unique or sensitive personal identifying information.~~

† ~~{(1) If~~ ~~{(2) If~~ a law enforcement agency determines seizure of pawned or sold property is necessary under Section 13-32a-109.8 during the course of a criminal investigation in addition to the holding provisions under Section 13-32a-109, the law enforcement agency shall:

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

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

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

(ii) provides the date of the seizure request;

~~{(iii)}~~ (iii) provides the reason for the seizure under Section 13-32a-109.8;

~~[(iii)]~~ (iv) describes the article to be seized ~~{}~~ and

(v) states each reason the article is necessary during the course of a criminal investigation under Section 13-32A-109.8; and

~~[(iv)]~~ (vi) includes any information that facilitates the pawnbroker's ability to track the article when the prosecution agency takes over the case.

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

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

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

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

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

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

~~{~~ ~~—— (4) If the purpose for seizure of an article under this section is terminated before final disposition of the criminal case and the property is no longer needed as evidence under Section 77-24-2, the law enforcement agency requiring the seizure shall within 15 days:~~

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

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

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

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

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

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

(b) request restitution for the original victim.

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

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

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

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

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

~~(5) If the identity of a person as a victim is based upon that victim's having conducted a transaction involving the stolen property at a pawnshop, The pawnshop or secondhand business and regarding which the victim claims no knowledge of the status of the property as stolen, disposition of the property shall be conducted in accordance with Subsections (1) through (4), if the criminal prosecution regarding the stolen property has been concluded.~~

~~(6) If the criminal prosecution regarding the stolen property under Subsection (5) has~~

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~~not been concluded, disposition of the property shall be as follows:~~

~~—— (a) if the identity of the perpetrator of the theft remains unknown, if more than 180 days have passed since any hold on the article has expired, and no court order extends the hold, the victim may request release of the property under Section 77-24-2; or~~

~~—— (b) if the identity of the perpetrator of the theft is known, if a warrant is outstanding for the arrest of the perpetrator of the theft, and the article is no longer needed as evidence under Section 77-24-2, the victim may request release of the property under Section 77-24-2.~~

~~—— [(5)] (7) shall retain possession of the item until the resolution of the criminal adjudication or investigation, unless:~~

~~(a) necessary during the course of a criminal investigation and actual physical possession of an article purchased or pawned is essential to a law enforcement purpose of:~~

~~(i) fingerprinting of an article;~~

~~(ii) chemical testing of an article;~~

~~(iii) use of an article as an exhibit at trial, as authorized by the prosecutor; or~~

~~(iv) if the article contains unique or sensitive personal identifying information; or~~

~~(b) the item has been held for a period of 180 days, the holding period has lapsed, and no one has been formally charged or indicted.~~

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

~~[(6)] [(8)] (7) At all times during the course of a criminal investigation and subsequent prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or secondhand business subject to the hold unless a pawned or sold article has been seized by the law enforcement agency pursuant to Section 13-32a-109.5.~~

~~{ Section 4. Section 77-24-2 is amended to read:~~

~~—— 77-24-2. Property not needed as evidence -- Return procedure.~~

~~—— (1) Property which is not needed as evidence shall be returned to the owner, if the owner may lawfully possess it, or disposed of in accordance with this chapter.~~

~~—— (2) (a) When the peace officer or the officer's employing agency becomes aware that the property is not needed as evidence, the officer or the agency shall inform the prosecuting~~

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~~attorney that the property is not needed and provide a description and details of ownership.~~

~~—— (b) When the prosecuting attorney is informed or otherwise becomes aware that the property is not needed as evidence, the prosecutor shall authorize release of the property to the owner.~~

~~—— (c) When the peace officer or the officer's employing agency becomes aware that any property is to be returned to its owner, the officer or employing agency shall exercise due diligence in attempting to notify the rightful owner that the property is to be returned.~~

~~—— (d) If the property was seized under Section 13-32a-109.5 and is no longer needed as evidence in a criminal prosecution, disposition of the property shall be in accordance with Section 13-32a-109.8.~~

~~—— [(d)] (e) If the property is a weapon, the peace officer shall dispose of it in accordance with Section 76-10-525.~~

~~—— [(e)] (f) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the evidence custodian, the custodian shall release the property to the owner.~~

~~—— (ii) If the evidence custodian is unable to locate an owner of the property or if the owner is not entitled to lawfully possess the property, the agency having custody of the property shall dispose of the property in accordance with Section 77-24-4.~~

~~—— (3) (a) When property is received in evidence, the clerk of the court last receiving it shall retain the property or the clerk shall return the property to the custody of the peace officer. The property shall be retained by the clerk or the officer until all direct appeals and retrials are final, at which time the property shall be returned to the owner in accordance with this chapter. If the property was seized for forfeiture, it shall be held and disposed of as provided in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.~~

~~—— (b) If the prosecuting attorney considers it necessary to retain control over the evidence, in anticipation of possible collateral attacks upon the judgment or for use in a potential prosecution, he may decline to authorize return of the property to the owner.~~

Legislative Review Note

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~~as of 2-25-11 3:27 PM~~

~~Office of Legislative Research and General Counsel}~~