

1 **SECOND HAND ITEM TRANSACTIONS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jennifer M. Seelig**

5 Senate Sponsor: Jerry W. Stevenson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise
10 Transaction Information Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ authorizes local government to enforce the chapter;
- 14 ▶ defines original victim to include a representative of the victim;
- 15 ▶ changes the fingerprint requirement from the thumb to the index finger;
- 16 ▶ requires that pawn and secondhand businesses advise persons attempting to sell or
17 pawn property that they must comply with the statutory unclaimed property
18 provisions;
- 19 ▶ removes the requirement that the pawn and secondhand database respond to
20 inquiries from persons claiming ownership of property;
- 21 ▶ deletes current language describing procedures concerning pawn and secondhand
22 business possession of property subject to law enforcement investigation and
23 provides new language regarding possession by the business, and including changes
24 in the obligation of the victim to cooperate with law enforcement;
- 25 ▶ provides that if there is a conflict between this chapter and the current code
26 regarding property not needed as evidence, this chapter takes precedence;
- 27 ▶ imposes a class B criminal misdemeanor penalty on specific conduct;
- 28 ▶ provides that a pawn or secondhand business may not sell to a person younger than
29 18 or a person who appears to be under the influence of alcohol or controlled

30 substances;

31 ▶ increases the database fees in the chapter for pawn and secondhand businesses;

32 ▶ increases the membership of the Secondhand Merchandise Advisory Board by

33 adding a representative of municipal prosecutors and increasing the number of

34 members who represent secondhand businesses from two to three;

35 ▶ provides that the board may propose administrative rules to the division regarding

36 best practices and standardized property descriptions;

37 ▶ provides a process for pawn and secondhand businesses to submit complaints to the

38 Peace Officers Standards and Training Division regarding law enforcement

39 practices;

40 ▶ increases the fees for database use for each sworn peace officer in an agency, and

41 for out-of-state agencies; and

42 ▶ requires that the advisory board quorum be greater than a simple majority of the

43 members.

44 **Money Appropriated in this Bill:**

45 None

46 **Other Special Clauses:**

47 This bill coordinates with H.B. 239, Pawnshop Record Amendments, by providing that

48 specified language in this bill takes precedence.

49 **Utah Code Sections Affected:**

50 AMENDS:

51 **13-32a-102**, as last amended by Laws of Utah 2009, Chapter 272

52 **13-32a-102.5**, as last amended by Laws of Utah 2009, Chapter 272

53 **13-32a-104**, as last amended by Laws of Utah 2008, Chapter 333

54 **13-32a-106**, as last amended by Laws of Utah 2007, Chapter 352

55 **13-32a-106.5**, as last amended by Laws of Utah 2009, Chapter 272

56 **13-32a-108**, as last amended by Laws of Utah 2009, Chapter 272

57 **13-32a-109**, as last amended by Laws of Utah 2011, Chapter 348

- 58 **13-32a-109.5**, as last amended by Laws of Utah 2011, Chapter 348
- 59 **13-32a-110**, as last amended by Laws of Utah 2009, Chapter 272
- 60 **13-32a-111**, as last amended by Laws of Utah 2009, Chapters 183 and 272
- 61 **13-32a-112**, as last amended by Laws of Utah 2009, Chapter 272
- 62 **13-32a-112.5**, as enacted by Laws of Utah 2008, Chapter 333
- 63 **77-24-2**, as last amended by Laws of Utah 2005, Chapter 126

64 ENACTS:

- 65 **13-32a-110.5**, Utah Code Annotated 1953
- 66 **13-32a-115**, Utah Code Annotated 1953
- 67 **13-32a-116**, Utah Code Annotated 1953
- 68 **13-32a-117**, Utah Code Annotated 1953

69 REPEALS:

- 70 **13-32a-109.8**, as last amended by Laws of Utah 2011, Chapter 348

71 **Utah Code Sections Affected by Coordination Clause:**

- 72 **13-32a-106.5**, as last amended by Laws of Utah 2009, Chapter 272



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

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

76 **13-32a-102. Definitions.**

77 As used in this chapter:

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

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

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

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

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

83 (c) that is furniture or other decorative objects produced in a previous time period, as

84 distinguished from new items of a similar nature; and

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

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

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

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

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

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

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

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

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

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

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

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

105 (9) "Division" means the Division of Consumer Protection in Title 13, Chapter 1,
106 Department of Commerce.

107 (10) "Identification" means a form of positive identification issued by a governmental
108 entity and that:

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

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

112 (11) "Local law enforcement agency" means the law enforcement agency that has
113 direct responsibility for ensuring compliance with central database reporting requirements for

114 the jurisdiction where the pawnshop or secondhand business is located.

115 (12) "Misappropriated" means stolen, embezzled, converted, obtained by theft, or
116 otherwise appropriated without authority of the lawful owner.

117 (13) "Original victim" means a victim who is not a party to the pawn or sale transaction
118 and includes:

119 (a) an authorized representative designated in writing by the original victim; and

120 (b) an insurer who has indemnified the original victim for the loss of the described
121 property.

122 (14) "Pawnbroker" means a person whose business engages in the following activities:

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

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

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

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

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

132 (15) "Pawn and secondhand business" means any business operated by a pawnbroker
133 or secondhand merchandise dealer, or the owner or operator of the business.

134 (16) "Pawn ticket" means a document upon which information regarding a pawn
135 transaction is entered when the pawn transaction is made.

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

139 (18) "Pawnshop" means the physical location or premises where a pawnbroker
140 conducts business.

141 (19) "Pledgor" means a person who conducts a pawn transaction with a pawnshop.

142 (20) "Property" means any tangible personal property.

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

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

147 (a) for its gold, silver, or platinum content; and

148 (b) for the purpose of reuse of the metal content.

149 (23) (a) "Secondhand merchandise dealer" means an owner or operator of a business
150 that:

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

153 (ii) does not function as a pawnbroker.

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

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

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

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

159 (iv) the sale of secondhand goods at events commonly known as "garage sales," "yard
160 sales," or "estate sales";

161 (v) the sale or receipt of secondhand books, magazines, or post cards;

162 (vi) the sale or receipt of used merchandise donated to recognized nonprofit, religious,
163 or charitable organizations or any school-sponsored association, and for which no
164 compensation is paid;

165 (vii) the sale or receipt of secondhand clothing and shoes;

166 (viii) any person offering his own personal property for sale, purchase, consignment, or
167 trade via the Internet;

168 (ix) any person or entity offering the personal property of others for sale, purchase,
169 consignment, or trade via the Internet, when that person or entity does not have, and is not

170 required to have, a local business or occupational license or other authorization for this activity;

171 (x) any owner or operator of a retail business that receives used merchandise as a
172 trade-in for similar new merchandise;

173 (xi) an owner or operator of a business that contracts with other persons or entities to
174 offer those persons' secondhand goods for sale, purchase, consignment, or trade via the
175 Internet;

176 (xii) any dealer as defined in Section 76-10-901, which concerns scrap metal and
177 secondary metals; or

178 (xiii) the purchase of items in bulk that are:

179 (A) sold at wholesale in bulk packaging;

180 (B) sold by a person licensed to conduct business in Utah; and

181 (C) regularly sold in bulk quantities as a recognized form of sale.

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

183 **13-32a-102.5. Administration and enforcement.**

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

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

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

190 (4) Municipal and county law enforcement agencies, prosecutorial agencies, and
191 governmental agencies may enforce the criminal and civil provisions of this chapter.

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

193 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
194 **items -- Prohibition against pawning or selling certain property.**

195 (1) Every pawnbroker or secondhand merchandise dealer shall keep a register of each
196 article of property a person pawns or sells to the pawnbroker or secondhand merchandise
197 dealer, except as provided in Subsection 13-32a-102(23)(b). Every pawn and secondhand

198 business owner or operator, or his employee, shall enter the following information regarding
199 every article pawned or sold to the owner or employee:

- 200 (a) the date and time of the transaction;
- 201 (b) the pawn transaction ticket number, if the article is pawned;
- 202 (c) the date by which the article must be redeemed;
- 203 (d) the following information regarding the person who pawns or sells the article:
 - 204 (i) the person's name, residence address, and date of birth;
 - 205 (ii) the number of the driver license or other form of positive identification presented
206 by the person, and notations of discrepancies if the person's physical description, including
207 gender, height, weight, race, age, hair color, and eye color, does not correspond with
208 identification provided by the person;
 - 209 (iii) the person's signature; and
 - 210 (iv) a legible fingerprint of the person's right ~~[thumb]~~ index finger, or if the right
211 ~~[thumb]~~ index finger cannot be fingerprinted, a legible fingerprint of the person with a written
212 notation identifying the fingerprint and the reason why the ~~[thumb]~~ index finger's print was
213 unavailable;
 - 214 (e) the amount loaned on or paid for the article, or the article for which it was traded;
 - 215 (f) the identification of the pawn or secondhand business owner or the employee,
216 whoever is making the register entry; and
 - 217 (g) an accurate description of the article of property, including available identifying
218 marks such as:
 - 219 (i) names, brand names, numbers, serial numbers, model numbers, color,
220 manufacturers' names, and size;
 - 221 (ii) metallic composition, and any jewels, stones, or glass;
 - 222 (iii) any other marks of identification or indicia of ownership on the article;
 - 223 (iv) the weight of the article, if the payment is based on weight;
 - 224 (v) any other unique identifying feature;
 - 225 (vi) gold content, if indicated; and

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

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

234 (3) (a) A person may not pawn or sell any property to a business regulated under this
235 chapter if the property is subject to being turned over to a law enforcement agency in
236 accordance with Title 77, Chapter 24, Unclaimed Personal Property.

237 (b) If an individual attempts to sell or pawn property to a business regulated under this
238 chapter and the employee or owner of the business knows or has reason to know that the
239 property is subject to Title 77, Chapter 24, Unclaimed Personal Property, the employee or
240 owner shall advise the individual of the requirements of Title 77, Chapter 24, Unclaimed
241 Personal Property, and may not receive the property in pawn or sale.

242 (4) A violation of this section is a Class B misdemeanor and is also subject to civil
243 penalties under Section 13-32a-110.

244 Section 4. Section **13-32a-106** is amended to read:

245 **13-32a-106. Transaction information provided to the central database --**
246 **Protected information.**

247 (1) The information required to be recorded under Sections 13-32a-103 and
248 13-32a-104 that is capable of being transmitted electronically shall be transmitted
249 electronically to the central database on the next business day following the transaction.

250 (2) The pawnbroker shall maintain all pawn tickets generated by the pawnshop and
251 shall maintain the tickets in a manner so that the tickets are available to local law enforcement
252 agencies as required by this chapter and as requested by any law enforcement agency as part of
253 an investigation or reasonable random inspection conducted pursuant to this chapter.

254 (3) (a) If a pawn or secondhand business experiences a computer or electronic
255 malfunction that affects its ability to report transactions as required in Subsection (1), the pawn
256 or secondhand business shall immediately notify the local law enforcement agency of the
257 malfunction.

258 (b) The pawn or secondhand business shall solve the malfunction within three business
259 days or notify law enforcement under Subsection (4).

260 (4) If the computer or electronic malfunction under Subsection (3) cannot be solved
261 within three business days, the pawn or secondhand business shall notify the local law
262 enforcement agency of the reasons for the delay and provide documentation from a reputable
263 computer maintenance company of the reasons why the computer or electronic malfunction
264 cannot be solved within three business days.

265 (5) A computer or electronic malfunction does not suspend the pawn or secondhand
266 business' obligation to comply with all other provisions of this chapter.

267 (6) During the malfunction under Subsections (3) and (4), the pawn or secondhand
268 business shall:

269 (a) arrange with the local law enforcement agency a mutually acceptable alternative
270 method by which the pawn or secondhand business provides the required information to the
271 local law enforcement official; and

272 (b) a pawnshop shall maintain the pawn tickets and other related information required
273 under this chapter in a written form.

274 (7) A pawn or secondhand business that violates the electronic transaction reporting
275 requirement of this section is subject to an administrative fine of \$50 per day if:

276 (a) the pawn or secondhand business is unable to submit the information electronically
277 due to a computer or electronic malfunction;

278 (b) the three business day period under Subsection (3) has expired; and

279 (c) the pawn or secondhand business has not provided documentation regarding its
280 inability to solve the malfunction as required under Subsection (4).

281 (8) A pawn or secondhand business is not responsible for a delay in transmission of

282 information that results from a malfunction in the central database.

283 (9) A violation of this section is a Class B misdemeanor and is also subject to civil
284 penalties under Section 13-32a-110.

285 Section 5. Section **13-32a-106.5** is amended to read:

286 **13-32a-106.5. Confidentiality of pawn and purchase transactions.**

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

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

294 (b) investigating a possible violation of the record keeping or reporting requirements of
295 this chapter when the local law enforcement official, based on a review of the records and
296 information received, has reason to believe that a violation has occurred;

297 (c) responding to an inquiry from [~~a person claiming ownership of described property~~]
298 an insurance company investigating a claim for physical loss of described property by
299 searching the database to determine if property matching the description has been delivered to a
300 pawnbroker or secondhand business by another person in a pawn or purchase transaction and if
301 so, obtaining from the database:

302 (i) a description of the property;

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

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

306 (d) taking enforcement action under Section 13-2-5 against a pawnbroker or
307 secondhand business.

308 (2) An insurance company making a request under Subsection (1)(c) shall provide the
309 police report case number concerning the described property.

310 ~~[(2)]~~ (3) (a) A person may not knowingly and intentionally use, release, publish, or
311 otherwise make available to any person or entity any information obtained from the database
312 for any purpose other than those specified in Subsection (1).

313 (b) Each separate violation of Subsection ~~[(2)]~~ (3)(a) is a class B misdemeanor.

314 (c) Each separate violation of Subsection ~~[(2)]~~ (3)(a) is subject to a civil penalty not to
315 exceed \$250.

316 Section 6. Section **13-32a-108** is amended to read:

317 **13-32a-108. Retention of records -- Reasonable inspection.**

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

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

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

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

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

329 (3) A violation of this section is a Class B misdemeanor and is also subject to civil
330 penalties under Section 13-32a-110.

331 Section 7. Section **13-32a-109** is amended to read:

332 **13-32a-109. Holding period for articles.**

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

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

335 and

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

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

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

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

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

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

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

357 (a) states the active case number;

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

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

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

364 (4) The initial hold by a law enforcement agency is for a period of 90 days. If the
365 article is not seized by the law enforcement agency, the article shall remain in the custody of

366 the pawn or secondhand business and is subject to the hold unless exigent circumstances
367 require the purchased or pawned article to be seized by the law enforcement agency.

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

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

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

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

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

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

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

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

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

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

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

- 394 (9) The written notice under Subsection (8)(b) is considered provided when:
395 (a) personally delivered to the pawn or secondhand business with a signed receipt of
396 delivery;
397 (b) delivered to the pawn or secondhand business by registered or certified United
398 States mail; or
399 (c) delivered by any other means with the mutual assent of the law enforcement agency
400 and the pawn or secondhand business.

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

404 (11) A violation of this section is a Class B misdemeanor and is also subject to civil
405 penalties under Section 13-32a-110.

406 Section 8. Section **13-32a-109.5** is amended to read:

407 **13-32a-109.5. Seizure of property.**

408 (1) If a law enforcement agency determines seizure of property pawned or sold
409 [~~property~~] to a pawn or secondhand business is necessary under [~~Section 13-32a-109.8~~] this
410 chapter during the course of a criminal investigation, in addition to the holding provisions
411 under Section 13-32a-109, the law enforcement agency shall:

- 412 (a) notify the pawnshop of the specific item to be seized;
413 (b) issue to the pawnshop a seizure ticket in a form approved by the division and that:
414 (i) provides the active case number related to the item to be seized;
415 (ii) provides the date of the seizure request;
416 (iii) provides the reason for the seizure [~~under Section 13-32a-109.8~~];
417 (iv) describes the article to be seized;
418 (v) states each reason the article is necessary during the course of a criminal
419 investigation [~~under Section 13-32A-109.8~~]; and
420 (vi) includes any information that facilitates the pawnbroker's ability to track the article
421 when the prosecution agency takes over the case.

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

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

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

430 (3) If the law enforcement agency seizing the pawned or sold property is not the local
431 law enforcement agency, the seizing agency shall, in addition to compliance with Subsection
432 (1):

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

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

437 Section 9. Section **13-32a-110** is amended to read:

438 **13-32a-110. Civil penalties.**

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

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

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

443 (c) Section 13-32a-108, retention of records;

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

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

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

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

450 (3) The imposition of civil penalties under this section does not prohibit criminal
451 prosecution by a governmental entity for criminal violations of this chapter.

452 Section 10. Section **13-32a-110.5** is enacted to read:

453 **13-32a-110.5. Transactions with certain persons prohibited.**

454 A pawn or secondhand business may not purchase, accept as a pawn, or take for
455 consignment any property from a person who:

456 (1) is younger than 18 years of age; or

457 (2) appears to be acting under the influence of alcohol or any controlled substance.

458 Section 11. Section **13-32a-111** is amended to read:

459 **13-32a-111. Fees to fund training and central database.**

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

462 (ii) On and after January 1, 2013, each pawnshop or secondhand merchandise dealer in
463 operation shall annually pay \$300 to the division, to be deposited in the account.

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

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

468 (ii) On and after January 1, 2013, each coin dealer in operation shall annually on
469 January 1 pay \$300 to the division to be deposited in the account.

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

474 (b) On and after January 1, 2013, each law enforcement agency that participates in the
475 use of the database shall annually pay to the division a fee of \$3 per sworn law enforcement
476 officer who is employed by the agency as of January 1 of that year. The fee shall be deposited
477 in the account.

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

480 (4) (a) (i) If a law enforcement agency outside Utah requests access to the central
481 database, the requesting agency shall pay a yearly fee of \$750 for the fiscal year beginning July
482 1, 2006, which shall be deposited in the account.

483 (ii) If a law enforcement agency outside Utah requests access to the central database,
484 the requesting agency shall pay a yearly fee of \$900 for the fiscal year beginning July 1, 2013,
485 which shall be deposited in the account.

486 (b) The board may establish the fee amount for fiscal years beginning on and after July
487 1, 2007 under Section 63J-1-504.

488 Section 12. Section **13-32a-112** is amended to read:

489 **13-32a-112. Secondhand Merchandise Advisory Board -- Membership -- Duties --**
490 **Providing training -- Records of compliance -- Training compliance -- Rulemaking.**

491 (1) There is created within the division the Secondhand Merchandise Advisory Board.
492 The board consists of [~~H~~] 13 voting members and one nonvoting member:

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

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

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

496 (d) one representative of the Utah Municipal Prosecutors' Association;

497 [~~d~~] (e) three representatives from the pawnshop industry, [~~two~~] three representatives
498 from the secondhand merchandise business industry, and one representative from the coin
499 dealer industry who are all appointed by the director of the Utah Commission on Criminal and
500 Juvenile Justice and who represent three separate pawnshops, [~~two~~] three separate secondhand
501 merchandise dealers, and one coin dealer, each of which are owned by a separate person or
502 entity;

503 [~~e~~] (f) one law enforcement officer who is appointed by the board members under
504 Subsections (1)(a) through [~~d~~] (e);

505 [~~f~~] (g) one law enforcement officer whose work regularly involves pawn and

506 secondhand businesses and who is appointed by the board members under Subsections (1)(a)
507 through ~~(f)~~ (e); ~~and~~

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

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

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

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

513 (d) A quorum of nine members is required for the board to take action.

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

517 (b) Each training session shall provide no fewer than two hours of training.

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

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

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

525 (6) The board shall provide each pawn or secondhand business with a certificate of
526 compliance upon completion by an employee of the two hours of compliance training under
527 Subsection (4).

528 (7) (a) Each law enforcement agency that has a pawn or secondhand business located
529 within its jurisdiction shall ensure that at least one of its officers completes two hours of
530 compliance training yearly.

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

533 (8) The board may propose to the division administrative rules establishing:

- 534 (a) pawn and secondhand business industry standards for best practices;
- 535 (b) standardized property descriptions for the database created under this chapter; and
- 536 (c) a roster of software programs for pawn and secondhand businesses setting out
- 537 minimum basic requirements for functionality.

538 (9) Pawn and secondhand businesses may file with the board complaints regarding law
539 enforcement agency practices perceived to be inconsistent with this chapter. The board may
540 refer the complaints to the Peace Officers Standards and Training Division.

541 Section 13. Section **13-32a-112.5** is amended to read:

542 **13-32a-112.5. Division may exempt certain businesses by rule -- No local**
543 **government enforcement on exempt businesses -- Temporary businesses subject to**
544 **chapter.**

545 (1) (a) The division may exempt specific classes of businesses from regulation under
546 this chapter by rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

553 (3) Municipal and county criminal and civil enforcement regarding the provisions of
554 this chapter may not be imposed on businesses exempted under this section.

555 (4) Any pawn or secondhand business not exempted by this section and that operates
556 on a temporary basis or from a location that is not a permanent retail location:

557 (a) shall comply with the provisions of this chapter; and

558 (b) is subject to enforcement of the provisions of this chapter.

559 Section 14. Section **13-32a-115** is enacted to read:

560 **13-32a-115. Investigation phase and victim's responsibilities.**

561 (1) If the property pawned or sold to a pawn or secondhand business is the subject of a

562 criminal investigation and a hold has been placed on the property under Section 13-32a-109,
563 the original victim shall do the following to establish a claim:

564 (a) positively identify to law enforcement the item stolen or lost;

565 (b) if a police report has not already been filed for the original theft or loss of property,
566 file a police report, and provide for the law enforcement agency information surrounding the
567 original theft or loss of property; and

568 (c) give a sworn statement under penalty of law that:

569 (i) claims ownership of the property;

570 (ii) references the original theft or loss; and

571 (iii) identifies the perpetrator if known.

572 (2) The pawn or secondhand business shall retain possession of any property subject to
573 a hold until a criminal prosecution is commenced relating to the property for which the hold
574 was placed unless:

575 (a) during the course of a criminal investigation the actual physical possession by law
576 enforcement of an article purchased or pawned is essential for the purpose of fingerprinting the
577 property, chemical testing of the property, or if the property contains unique or sensitive
578 personal identifying information; or

579 (b) an agreement between the original victim and the pawn or secondhand business to
580 return the property is reached.

581 (3) (a) Upon the commencement of a criminal prosecution, any article subject to a hold
582 for investigation under this chapter may be seized by the law enforcement agency which
583 requested the hold.

584 (b) Subsequent disposition of the property shall be consistent with Section 77-24-2
585 regarding property not needed as evidence and this chapter.

586 (c) If a conflict exists between the provisions of Section 77-24-2 regarding property not
587 needed as evidence and this chapter, this chapter takes precedence regarding property held by
588 pawn or secondhand businesses.

589 (4) At all times during the course of a criminal investigation and subsequent

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

593 Section 15. Section **13-32a-116** is enacted to read:

594 **13-32a-116. Property disposition -- Property subject to prosecution.**

595 (1) When any property that is pawned or sold to a pawn or secondhand business is the
596 subject of a criminal proceeding, and has been seized by law enforcement pursuant to Section
597 13-32a-115, the prosecuting agency shall notify the seizing agency, the original victim, and the
598 pawn or secondhand business if it determines the article is no longer needed as evidence
599 pending resolution of the criminal case.

600 (2) (a) If the property is no longer needed as evidence, the original victim and the pawn
601 or secondhand business from which the property was seized may choose to resolve the matter
602 pursuant to Subsection 13-32a-115(2)(b) within 10 days of notice being given that the property
603 is no longer needed.

604 (b) The original victim shall notify the seizing law enforcement agency and the pawn
605 or secondhand business of any agreed upon resolution and the seizing agency shall act
606 accordingly.

607 (3) (a) If the original victim and the pawn or secondhand business from which the
608 property was seized do not resolve the matter within the 10 days under Subsection (2), the
609 original victim or the pawn or secondhand business shall notify the prosecuting agency or law
610 enforcement agency in possession of the property that the disputed claim has not been resolved.

611 (b) (i) Upon receipt of written notice from the pawn or secondhand business or the
612 original victim that the parties are unable to resolve the disposition of the property as provided,
613 the prosecuting agency shall submit a motion to the court to schedule a property disposition
614 hearing within 45 days after receipt of the notice.

615 (ii) The prosecuting agency shall provide notice of the hearing to the pawn or
616 secondhand business, the original victim, and any named defendant in the pending criminal
617 case to the last known address or to counsel of record.

618 (iii) Notice shall be by certified mail or registered mail. Another form of notice may be
619 used if agreed upon by the parties.

620 (c) The hearing under Subsection (3)(b) may be combined with a preliminary
621 examination or other hearing, in the court's discretion.

622 (4) At the seized property disposition hearing the court shall take into consideration:

623 (a) the evidentiary value of the property and the need for its use at trial;

624 (b) whether alternative evidence, such as photographs, records, or serial numbers,
625 make retention of the property unnecessary;

626 (c) the proof of ownership of the property and compliance with Subsection
627 13-32a-115(1) by the original victim;

628 (d) whether retention of the property would create any undue hardship to the original
629 victim; and

630 (e) compliance by the pawn or secondhand business with the requirements of this
631 chapter, and potential financial loss to the business if the property were returned to the original
632 victim.

633 (5) Upon conclusion of the property disposition hearing the court may:

634 (a) order the return of the evidence to the original victim or to the pawn or secondhand
635 business as it determines appropriate; and

636 (b) make an initial finding of restitution for the original victim or the pawn or
637 secondhand business pending resolution of the criminal case.

638 (6) The court's determination of possession or restitution under Subsection (5) is a
639 continuing order subject to change or modification until the final resolution of the case.

640 Section 16. Section **13-32a-117** is enacted to read:

641 **13-32a-117. Property disposition if no criminal charges filed -- Administrative**
642 **hearing.**

643 (1) The original victim or the pawn or secondhand business may request an
644 administrative property disposition hearing with the Division of Consumer Protection if:

645 (a) more than 30 days have passed since:

646 (i) the law enforcement agency placed a hold on the property; or
647 (ii) the property was seized by the law enforcement agency; and
648 (b) an agreement pursuant to Subsection 13-32a-115(2)(b) has not been reached.

649 (2) The original victim shall provide to the Division of Consumer Protection at the
650 hearing under this section a copy of the sworn statement taken pursuant to Section 13-32a-115
651 and the case number assigned by the law enforcement agency.

652 (3) (a) The Division of Consumer Protection shall notify the law enforcement agency
653 in writing of the request for a property disposition hearing.

654 (b) The law enforcement agency shall forward the notice to the prosecution agency
655 having jurisdiction over the case involving the property.

656 (c) (i) The prosecution agency shall, within five business days of receiving the notice,
657 make an initial determination pursuant to Section 77-24-2 and this chapter of whether
658 continued hold or seizure regarding the property as evidence in a criminal trial is necessary.

659 (ii) If the prosecuting agency determines the property is no longer needed as evidence,
660 the law enforcement agency shall notify in writing the pawn or secondhand business and the
661 original victim of the prosecuting agency's determination as soon as reasonably possible.

662 (4) (a) Within 30 days after receiving the request and notification from law
663 enforcement that the property is not needed as evidence pursuant to Section 77-24-2 and this
664 chapter, the Division of Consumer Protection shall schedule an adjudicative hearing in
665 accordance with Title 63G, Chapter 4, Administrative Procedures Act, to determine ownership
666 of the claimed property. The division shall provide written notice of the hearing to the pawn or
667 secondhand business and the original victim.

668 (b) The division shall conduct the hearing to determine disposition of the claimed
669 seized property, taking into consideration:

670 (i) the proof of ownership of the property and compliance with Subsection
671 13-32a-115(1) by the original victim;

672 (ii) the claim of ownership by the pawn or secondhand business and the potential
673 financial loss to the business; and

674 (iii) compliance by the pawn or secondhand business with the requirements of this
675 chapter.

676 (c) If the division determines that the property should be released to the pawn or
677 secondhand business, the original victim retains a right of first refusal over the property for 15
678 days and may purchase the property at the amount financed or paid by the pawn or secondhand
679 business.

680 (d) The party to whom the division determines the property is to be released shall
681 maintain possession of the property for the duration of any time period regarding any
682 applicable right of appeal.

683 Section 17. Section **77-24-2** is amended to read:

684 **77-24-2. Property not needed as evidence -- Return procedure.**

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

687 (2) (a) When the peace officer or the officer's employing agency becomes aware that
688 the property is not needed as evidence, the officer or the agency shall inform the prosecuting
689 attorney that the property is not needed and provide a description and details of ownership.

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

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

696 (d) If the property is a weapon, the peace officer shall dispose of it in accordance with
697 Section 76-10-525.

698 (e) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the
699 evidence custodian, the custodian shall release the property to the owner.

700 (ii) If the evidence custodian is unable to locate an owner of the property or if the
701 owner is not entitled to lawfully possess the property, the agency having custody of the

702 property shall dispose of the property in accordance with Section 77-24-4.

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

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

713 (4) If a conflict exists between the provisions of this section and Title 13, Chapter 32a,
714 Pawnshop and Secondhand Merchandise Transaction Information Act, Title 13, Chapter 32a
715 governs regarding disposition of property held by a pawn or secondhand business in the course
716 of its business.

717 Section 18. **Repealer.**

718 This bill repeals:

719 Section **13-32a-109.8, Pawned or sold property subject to law enforcement**
720 **investigation.**

721 Section 19. **Coordinating H.B. 175 with H.B. 239 -- Superseding amendments.**

722 If this H.B. 175 and H.B. 239, Pawnshop Record Amendments, both pass and become
723 law, the Legislature intends that the Office of Legislative Research and General Counsel, in
724 preparing the Utah Code database for publication, modify Subsection 13-32a-106.5(1)(c) to
725 read:

726 "(c) responding to an inquiry from an insurance company investigating a claim for
727 physical loss of described property by searching the database to determine if property matching
728 the description has been delivered to a pawnbroker or secondhand business by another person
729 in a pawn or purchase transaction and if so, obtaining from the database:".

