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SECOND HAND ITEM TRANSACTIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Pawnshop and Secondhand Merchandise Transaction Information Act.

Highlighted Provisions:

This bill:

- ▶ provides that a pawn or secondhand business is required to return property to an original victim only if the original victim files a police report and files a statement under the Rules of Criminal Procedure regarding hearsay statements used in a criminal preliminary hearing;
- ▶ provides that if the original victim does not file the above documents, the victim shall pay the pawn or secondhand business the amount that was paid to the alleged defendant for the property;
- ▶ provides that if the defendant is convicted, the pawn or secondhand business shall return the property to the original victim;
- ▶ increases the annual training and central database fee from \$250 to \$300 and imposes the fee on part-time businesses and those without an established business address;
- ▶ requires the advisory board to establish best practices standards and present them in training sessions; and
- ▶ authorizes local governments to enforce specified provisions of the Pawnshop and



28 Secondhand Merchandise Transaction Information Act.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-32a-109.8**, as last amended by Laws of Utah 2011, Chapter 348

36 **13-32a-111**, as last amended by Laws of Utah 2009, Chapters 183 and 272

37 **13-32a-112**, as last amended by Laws of Utah 2009, Chapter 272

38 **13-32a-114**, as last amended by Laws of Utah 2007, Chapter 352



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

41 Section 1. Section **13-32a-109.8** is amended to read:

42 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

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

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

47 (b) request restitution for the original victim.

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

53 (2) If the property subject to the investigation and criminal prosecution is located at a
54 pawn or secondhand business, the pawnbroker or secondhand merchandise dealer shall deliver
55 the property to the original victim if the original victim provides documentation indicating the
56 victim has filed:

57 (a) a police report stating the property was stolen; and

58 (b) a statement under Rule 1102 , Utah Rules of Criminal Procedure, which also

59 complies with Subsections 13-32a-110(1), (2), and (3).

60 (3) If the original victim does not desire to pursue criminal charges or does not
61 cooperate in the prosecution of the property theft crimes charged against the defendant and the
62 theft by deception charges committed against the pawn or secondhand business, ~~[then]~~ or if the
63 original victim does not comply with Subsection (2), then the pawn or secondhand business
64 shall to deliver the subject property to original victim only if the original victim ~~[shall pay]~~
65 pays to the pawn or secondhand business the amount of money financed or paid by the pawn or
66 secondhand business to the alleged defendant in order to obtain the property.

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

70 (4) (a) If the subject property is not returned to the original victim under Subsections
71 (2) or (3), the pawnbroker or secondhand merchandise dealer shall comply with Section
72 13-32a-_____.

73 ~~(b) [If the victim cooperates in the prosecution under Subsection (4)(a)]~~ If the property
74 remains in the possession of the pawn or secondhand business and the [defendants are]
75 defendant is convicted, the prosecuting agency shall direct the pawn or secondhand business to
76 turn over the property to the original victim.

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

80 (5) ~~[The]~~ (a) Unless the property is delivered to the original victim under Subsections
81 (2) or (3), the pawnshop or secondhand business shall retain possession of the item until the
82 resolution of the criminal adjudication or investigation, [unless] except under Subsection
83 (5)(b).

84 (b) If during the course of a criminal investigation the actual physical possession by
85 law enforcement of an [article] property purchased or pawned is essential for [the purpose of]
86 any of the following purposes, the property shall be transferred to the law enforcement agency.

87 The purposes are:

88 ~~[(a)]~~ (i) fingerprinting of an article;

89 ~~[(b)]~~ (ii) chemical testing of an article;

90 ~~(c)~~ (iii) use of an article as an exhibit at trial, as authorized by the prosecutor; or
91 ~~(d)~~ (iv) if the article contains unique or sensitive personal identifying information; or

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

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

100 Section 2. Section **13-32a-111** is amended to read:

101 **13-32a-111. Fees to fund training and central database.**

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

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

106 (ii) for purposes of this Subsection (1)(b), includes those businesses that operate as a
107 pawnshop or secondhand merchandise dealer on a part-time or temporary basis or operate in
108 various locations and do not have a permanent business address.

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

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

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

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

119 (4) (a) If a law enforcement agency outside Utah requests access to the central
120 database, the requesting agency shall pay a yearly fee of \$750 for the fiscal year beginning July

121 1, 2006, which shall be deposited in the account.

122 (b) The board may establish the fee amount for fiscal years beginning on and after July
123 1, 2007 under Section 63J-1-504.

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

125 **13-32a-112. Secondhand Merchandise Advisory Board -- Membership -- Duties --**
126 **Providing training -- Records of compliance -- Training compliance -- Rulemaking.**

127 (1) There is created within the division the Secondhand Merchandise Advisory Board.
128 The board consists of 11 voting members and one nonvoting member:

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

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

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

132 (d) three representatives from the pawnshop industry, two representatives from the
133 secondhand merchandise business industry, and one representative from the coin dealer
134 industry who are all appointed by the director of the Utah Commission on Criminal and
135 Juvenile Justice and who represent three separate pawnshops, two separate secondhand
136 merchandise dealers, and one coin dealer, each of which are owned by a separate person or
137 entity;

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

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

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

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

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

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

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

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

152 (c) On and after January 1, 2013, the board shall annually establish best practices
153 standards for pawn and secondhand businesses and shall include these practices in the quarterly
154 training sessions.

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

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

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

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

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

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

170 Section 4. Section **13-32a-114** is amended to read:

171 **13-32a-114. Preemption of local ordinances -- Exceptions.**

172 (1) This chapter preempts all city, county, and other local ordinances governing pawn
173 or secondhand businesses and pawnbroking transactions, if the ordinances are more restrictive
174 than the provisions of this chapter or are not consistent with this chapter.

175 (2) Subsection (1) does not preclude a city, county, or other local governmental unit
176 from:

177 (a) enacting or enforcing local ordinances concerning public health, safety, or welfare,
178 if the ordinances are uniform and equal in application to pawn and secondhand businesses and
179 other retail businesses or activities;

180 (b) requiring a pawn or secondhand business to obtain and maintain a business license;
181 **[and]**

182 (c) enacting zoning ordinances that restrict areas where pawn or secondhand businesses

183 and other retail businesses or activities can be located[-]; and
184 (d) enforcing Sections 13-32a-103 through 13-32a-106.

Legislative Review Note
as of 2-27-12 3:26 PM

Office of Legislative Research and General Counsel