

## HB0175S02 compared with HB0175

~~deleted text~~ shows text that was in HB0175 but was deleted in HB0175S02.

inserted text shows text that was not in HB0175 but was inserted into HB0175S02.

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Representative Jennifer M. Seelig proposes the following substitute bill:

### SECOND HAND ITEM TRANSACTIONS

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer M. Seelig**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill ~~( )~~ modifies ~~(the)~~ Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act.

##### Highlighted Provisions:

This bill:

- ▶ authorizes local government to enforce the chapter;
- ▶ defines original victim to include a representative of the victim;
- ▶ changes the fingerprint requirement from the thumb to the index finger;
- ▶ requires that pawn and secondhand businesses advise persons attempting to sell or pawn property that they must comply with the statutory unclaimed property provisions;
- ▶ removes the requirement that the pawn and secondhand database respond to

## HB0175S02 compared with HB0175

inquiries from persons claiming ownership of property;

▶ deletes current language describing procedures concerning pawn and secondhand business possession of property subject to law enforcement investigation and provides new language regarding possession by the business, and including changes in the obligation of the victim to cooperate with law enforcement;

▶ provides that if there is a conflict between this chapter and the current code regarding property not needed as evidence, this chapter takes precedence;

▶ imposes a class B criminal misdemeanor penalty on specific conduct;

▶ ~~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~~ may not sell to a person younger than 18 or a person who appears to be under the influence of alcohol or controlled substances;

▶ increases the database fees in the chapter for pawn and 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;~~

businesses;

▶ ~~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~~ membership of the Secondhand Merchandise ~~Transaction Information Act;~~ Advisory Board by adding a representative of municipal prosecutors and increasing the number of members who represent secondhand businesses from two to three;

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

## HB0175S02 compared with HB0175

best practices and standardized property descriptions:

- ▶ provides a process for pawn and secondhand businesses to submit complaints to the Peace Officers Standards and Training Division regarding law enforcement practices;
- ▶ increases the fees for database use for each sworn peace officer in an agency, and for out-of-state agencies; and
- ▶ requires a that the advisory board quorum be greater than a simple majority of the members.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

~~{13-32a-109.8}~~13-32a-102, as last amended by Laws of Utah 2009, Chapter 272

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

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

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

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

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

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

13-32a-109.5, as last amended by Laws of Utah 2011, Chapter 348

13-32a-110, as last amended by Laws of Utah 2009, Chapter 272

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

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

~~{13-32a-114}~~13-32a-112.5, as enacted by Laws of Utah 2008, Chapter 333

77-24-2, as last amended by Laws of Utah ~~{2007, Chapter 352}~~

~~{2005, Chapter 126}~~

ENACTS:

13-32a-110.5, Utah Code Annotated 1953

13-32a-115, Utah Code Annotated 1953

## HB0175S02 compared with HB0175

13-32a-116, Utah Code Annotated 1953

13-32a-117, Utah Code Annotated 1953

### REPEALS:

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

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

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

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

As used in this chapter:

- (1) "Account" means the Pawnbroker and Secondhand Merchandise Operations Restricted Account created in Section 13-32a-113.
- (2) "Antique item" means an item:
  - (a) that is generally older than 25 years;
  - (b) whose value is based on age, rarity, condition, craftsmanship, or collectability;
  - (c) that is furniture or other decorative objects produced in a previous time period, as distinguished from new items of a similar nature; and
  - (d) obtained from auctions, estate sales, other antique shops, and individuals.
- (3) "Antique shop" means a business operating at an established location and that offers for sale antique items.
- (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board created by this chapter.
- (5) "Central database" or "database" means the electronic database created and operated under Section 13-32a-105.
- (6) "Coin" means a piece of currency, usually metallic and usually in the shape of a disc that is:
  - (a) stamped metal, and issued by a government as monetary currency; or
  - (b) (i) worth more than its current value as currency; and
  - (ii) worth more than its metal content value.
- (7) "Coin dealer" means a person or business whose sole business activity is the selling and purchasing of coins and precious metals.
- (8) "Commercial grade precious metals" or "precious metals" means ingots, monetized

## HB0175S02 compared with HB0175

bullion, art bars, medallions, medals, tokens, and currency that are marked by the refiner or fabricator indicating their fineness and include:

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

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

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

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

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

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

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

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

(13) "Original victim" means a victim who is not a party to the pawn or sale transaction and includes an authorized representative designated in writing by the original victim.

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

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

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

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

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

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

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

## HB0175S02 compared with HB0175

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

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

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

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

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

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

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

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

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

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

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

(ii) does not function as a pawnbroker.

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

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

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

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

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

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

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

## HB0175S02 compared with HB0175

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

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

(ix) any person or entity offering the personal property of others for sale, purchase, consignment, or trade via the Internet, when that person or entity does not have, and is not required to have, a local business or occupational license or other authorization for this activity;

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

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

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

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

(A) sold at wholesale in bulk packaging;

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

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

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

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

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

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

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

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

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

**13-32a-104. Register required to be maintained -- Contents -- Identification of items.**

(1) Every pawnbroker or secondhand merchandise dealer shall keep a register of each

## HB0175S02 compared with HB0175

article of property a person pawns or sells to the pawnbroker or secondhand merchandise dealer, except as provided in Subsection 13-32a-102(23)(b). Every pawn and secondhand business owner or operator, or his employee, shall enter the following information regarding every article pawned or sold to the owner or employee:

- (a) the date and time of the transaction;
- (b) the pawn transaction ticket number, if the article is pawned;
- (c) the date by which the article must be redeemed;
- (d) the following information regarding the person who pawns or sells the article:
  - (i) the person's name, residence address, and date of birth;
  - (ii) the number of the driver license or other form of positive identification presented by the person, and notations of discrepancies if the person's physical description, including gender, height, weight, race, age, hair color, and eye color, does not correspond with identification provided by the person;
  - (iii) the person's signature; and
  - (iv) a legible fingerprint of the person's right ~~thumb~~ index finger, or if the right ~~thumb~~ index finger cannot be fingerprinted, a legible fingerprint of the person with a written notation identifying the fingerprint and the reason why the ~~thumb~~ index finger's print was unavailable;
- (e) the amount loaned on or paid for the article, or the article for which it was traded;
- (f) the identification of the pawn or secondhand business owner or the employee, whoever is making the register entry; and
- (g) an accurate description of the article of property, including available identifying marks such as:
  - (i) names, brand names, numbers, serial numbers, model numbers, color, manufacturers' names, and size;
  - (ii) metallic composition, and any jewels, stones, or glass;
  - (iii) any other marks of identification or indicia of ownership on the article;
  - (iv) the weight of the article, if the payment is based on weight;
  - (v) any other unique identifying feature;
  - (vi) gold content, if indicated; and
  - (vii) if multiple articles of a similar nature are delivered together in one transaction and

## HB0175S02 compared with HB0175

the articles do not bear serial or model numbers and do not include precious metals or gemstones, such as musical or video recordings, books, or hand tools, the description of the articles is adequate if it includes the quantity of the articles and a description of the type of articles delivered.

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

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

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

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

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

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

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

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

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

## HB0175S02 compared with HB0175

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

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

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

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

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

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

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

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

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

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

(8) A pawn or secondhand business is not responsible for a delay in transmission of information that results from a malfunction in the central database.

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

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

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

(1) All pawn and purchase transaction records delivered to a local law enforcement official or transmitted to the central database pursuant to Section 13-32a-106 are protected

## HB0175S02 compared with HB0175

records under Section 63G-2-305. These records may be used only by law enforcement officials and the division and only for the law enforcement and administrative enforcement purposes of:

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

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

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

(i) a description of the property;

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

(iii) the name, address, and date of birth of the conveying person; ~~[and]~~

(d) ~~taking enforcement action under Section 13-2-5 against a pawnbroker or secondhand business~~ [-]; or

(e) responding to a request from an insurance company under Subsection (1)(c), which shall be accompanied by the case number assigned by the law enforcement agency that has been filed concerning the described property.

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

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

(c) Each separate violation of Subsection (2)(a) is subject to a civil penalty not to exceed \$250.

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

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

(1) The pawnbroker or law enforcement agency, whichever has custody of pawn

## HB0175S02 compared with HB0175

tickets, shall retain them for no less than three years from the date of the transaction.

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

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

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

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

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

Section 7. 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

## HB0175S02 compared with HB0175

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 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 shall remain in the custody of the pawn or secondhand business until further disposition by the law enforcement agency, and as consistent with this chapter.

(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 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.

(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;

## HB0175S02 compared with HB0175

(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, 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 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.

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

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

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

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

## HB0175S02 compared with HB0175

- (a) notify the pawnshop of the specific item to be seized;
- (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) provides the reason for the seizure ~~[under Section 13-32a-109.8]~~;
  - (iv) describes the article to be seized;
  - (v) states each reason the article is necessary during the course of a criminal investigation ~~[under Section 13-32A-109.8]~~; and
  - (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.

(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):

(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]~~.

Section ~~{1}~~9. Section ~~{13-32a-109.8}~~13-32a-110 is amended to read:

~~{~~ ~~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~~

## HB0175S02 compared with HB0175

~~\_\_\_\_\_ (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.]~~

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

~~\_\_\_\_\_ (a) a police report stating the property was stolen; and~~

~~\_\_\_\_\_ (b) a statement under Rule 1102, Utah Rules of Criminal Procedure, which also complies with Subsections 13-32a-110(1), (2), and (3);~~

~~\_\_\_\_\_ (3) If the original victim does not desire to 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] or if the original victim does not comply with Subsection (2), then the pawn or secondhand business shall to deliver the subject property to original victim only if the original victim [shall pay] pays to the pawn or secondhand business the amount of money financed or paid by the pawn or secondhand business to the alleged 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).]~~

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

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

~~\_\_\_\_\_ (c) Upon receipt of notice from the prosecuting agency that the property shall be turned~~

## HB0175S02 compared with HB0175

~~over to the original victim, the pawn or secondhand business shall return the property to the original victim as soon as reasonably possible:~~

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

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

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

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

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

~~—— [(d)] (iv) if the article contains unique or sensitive personal identifying information; or~~

~~—— (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:~~

~~—— (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:~~

### ‡ **13-32a-110. ~~{Penalties}~~Civil penalties.**

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

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

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

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

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

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

(f) Section 13-32a-112, training requirements for pawn, secondhand, and coin dealer

## HB0175S02 compared with HB0175

business employees and officers of participating law enforcement agencies.

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

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

(4) Intentional, willful, knowing, or reckless violations of this chapter by any pawn or secondhand business regulated by the chapter, or any employee of the business, are punishable as a class B misdemeanor unless otherwise provided.

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

### 13-32a-110.5. Transactions with certain persons prohibited.

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

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

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

Section ~~{2}~~11. Section 13-32a-111 is amended to read:

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

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

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

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

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

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

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

(2) (a) On and after January 1, 2005, each law enforcement agency that participates in

## HB0175S02 compared with HB0175

the use of the database shall annually pay to the division a fee of \$2 per sworn law enforcement officer who is employed by the agency as of January 1 of that year. The fee shall be deposited in the account.

~~(2)~~(b) On and after January 1, ~~2005~~2013, each law enforcement agency that participates in the use of the database shall annually pay to the division a fee of ~~\$2~~\$3 per sworn law enforcement officer who is employed by the agency as of January 1 of that year. The fee shall be deposited in the account.

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

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

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

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

Section ~~3~~12. Section **13-32a-112** is amended to read:

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

(1) There is created within the division the Secondhand Merchandise Advisory Board. The board consists of ~~11~~13 voting members and one nonvoting member:

- (a) one representative of the Utah Chiefs of Police Association;
- (b) one representative of the Utah Sheriffs Association;
- (c) one representative of the Statewide Association of Prosecutors;

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

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

## HB0175S02 compared with HB0175

entity;

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

~~[(f)]~~ [(g)] one law enforcement officer whose work regularly involves pawn and secondhand businesses and who is appointed by the board members under Subsections (1)(a) through ~~[(d)]~~ [(e)]; ~~[and]~~

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

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

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

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

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

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

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

~~{ ——— [(c) On and after January 1, 2013, the board shall annually establish best practices standards for pawn and secondhand businesses and shall include these practices in the quarterly training sessions.]~~

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

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

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

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

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

## HB0175S02 compared with HB0175

compliance training yearly.

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

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

(a) pawn and secondhand business industry standards for best practices;

(b) standardized property descriptions for the database created under this chapter; and

(c) a roster of software programs for pawn and secondhand businesses setting out minimum basic requirements for functionality.

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

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

**13-32a-112.5. Division may exempt certain businesses by rule.**

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

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

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

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

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

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

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

Section ~~{4}~~14. Section ~~{13-32a-114}~~13-32a-115 is ~~{amended}~~enacted to read:

~~{13-32a-114}~~13-32a-115.~~{~~Preemption of local ordinances -- Exceptions.

~~—————~~(1) This chapter preempts all city, county, and other local ordinances governing Investigation phase and victim's responsibilities.

## HB0175S02 compared with HB0175

(1) If the property pawned or sold to a pawn or secondhand ~~businesses and~~ pawnbroking transactions, if the ordinances are more restrictive than the provisions of this chapter or are not consistent with this chapter:

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

~~— (a) enacting or enforcing local ordinances concerning public health, safety, or welfare, if the ordinances are uniform and equal in application to pawn and ~~business is the subject of a criminal investigation and a hold has been placed on the property under Section 13-32a-109, the original victim shall do the following to establish a claim:~~~~

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

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

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

~~(i) claims ownership of the property;~~

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

~~(iii) identifies the perpetrator if known.~~

~~(2) The pawn or secondhand ~~businesses and other retail businesses or activities;~~~~

~~— (b) requiring a ~~business shall retain possession of any property subject to a hold until a criminal prosecution is commenced relating to the property for which the hold was placed unless:~~~~

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

~~(b) an agreement between the original victim and the pawn or secondhand business to ~~obtain and maintain a business license; [and]~~~~

~~— (c) enacting zoning ordinances that restrict areas where ~~return the property is reached.~~~~

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

## HB0175S02 compared with HB0175

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

(c) If a conflict exists between the provisions of Section 77-24-2 regarding property not needed as evidence and this chapter, this chapter takes precedence regarding property held by pawn or secondhand businesses ~~{ and other retail businesses or activities can be located[.]} and~~

~~\_\_\_\_\_ (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~~

(4) 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 15. Section 13-32a-116 is enacted to read:

#### 13-32a-116. Property disposition -- Property subject to prosecution.

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

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

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

## HB0175S02 compared with HB0175

accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) make an initial finding of restitution for the original victim or the pawn or

## HB0175S02 compared with HB0175

secondhand business pending resolution of the criminal case.

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

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

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

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

(a) more than 30 days have passed since:

(i) the law enforcement agency placed hold on the property; or

(ii) the property was seized by the law enforcement agency; and

(b) an agreement pursuant to Section 13-32a-115(2)(b) has not been reached.

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

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

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

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

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

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

## HB0175S02 compared with HB0175

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

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

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

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

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

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

Section 17. 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 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] prosecuting attorney 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 is a weapon, the peace officer shall dispose of it in accordance with Section 76-10-525.

(e) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the

## HB0175S02 compared with HB0175

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] the prosecuting attorney may decline to authorize return of the property to the owner.

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

### Section 18. Repealer.

This bill repeals:

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