

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: _____

LONG TITLE

General Description:

This bill modifies 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 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



- 26 regarding property not needed as evidence, this chapter takes precedence;
- 27 ▶ imposes a general class B criminal misdemeanor penalty for any violation of this
- 28 chapter except where otherwise specified, in addition to the current civil penalties;
- 29 ▶ provides that a pawn or secondhand business may not sell to a person younger
- 30 than 18 or a person who appears to be under the influence of alcohol or controlled
- 31 substances;
- 32 ▶ increases the database fees in the chapter for pawn and secondhand businesses;
- 33 ▶ increases the membership of the Secondhand Merchandise Advisory Board by
- 34 adding a representative of municipal prosecutors and increasing the number of
- 35 members who represent secondhand businesses from two to three;
- 36 ▶ provides that the board may propose administrative rules to the division regarding
- 37 best practices and standardized property descriptions;
- 38 ▶ provides a process for pawn and secondhand businesses to submit complaints to the
- 39 board regarding law enforcement 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 a 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 None

48 **Utah Code Sections Affected:**

49 AMENDS:

- 50 **13-32a-102**, as last amended by Laws of Utah 2009, Chapter 272
- 51 **13-32a-102.5**, as last amended by Laws of Utah 2009, Chapter 272
- 52 **13-32a-104**, as last amended by Laws of Utah 2008, Chapter 333
- 53 **13-32a-106.5**, as last amended by Laws of Utah 2009, Chapter 272
- 54 **13-32a-109.5**, as last amended by Laws of Utah 2011, Chapter 348
- 55 **13-32a-110**, as last amended by Laws of Utah 2009, Chapter 272
- 56 **13-32a-111**, as last amended by Laws of Utah 2009, Chapters 183 and 272

57 13-32a-112, as last amended by Laws of Utah 2009, Chapter 272

58 13-32a-112.5, as enacted by Laws of Utah 2008, Chapter 333

59 77-24-2, as last amended by Laws of Utah 2005, Chapter 126

60 ENACTS:

61 13-32a-110.5, Utah Code Annotated 1953

62 13-32a-115, Utah Code Annotated 1953

63 13-32a-116, Utah Code Annotated 1953

64 13-32a-117, Utah Code Annotated 1953

65 REPEALS:

66 13-32a-109.8, as last amended by Laws of Utah 2011, Chapter 348



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

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

70 13-32a-102. Definitions.

71 As used in this chapter:

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

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

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

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

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

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

78 distinguished from new items of a similar nature; and

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

80 (3) "Antique shop" means a business operating at an established location and that

81 offers for sale antique items.

82 (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board

83 created by this chapter.

84 (5) "Central database" or "database" means the electronic database created and

85 operated under Section 13-32a-105.

86 (6) "Coin" means a piece of currency, usually metallic and usually in the shape of a

87 disc that is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 the unredeemed pledges;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

144 (ii) does not function as a pawnbroker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

170 (A) sold at wholesale in bulk packaging;

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

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

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

174 **13-32a-102.5. Administration and enforcement.**

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

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

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

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

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

184 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
185 **items.**

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

191 (a) the date and time of the transaction;

192 (b) the pawn transaction ticket number, if the article is pawned;

193 (c) the date by which the article must be redeemed;

194 (d) the following information regarding the person who pawns or sells the article:

195 (i) the person's name, residence address, and date of birth;

196 (ii) the number of the driver license or other form of positive identification presented
197 by the person, and notations of discrepancies if the person's physical description, including
198 gender, height, weight, race, age, hair color, and eye color, does not correspond with
199 identification provided by the person;

200 (iii) the person's signature; and

201 (iv) a legible fingerprint of the person's right [~~thumb~~] index finger, or if the right
202 [~~thumb~~] index finger cannot be fingerprinted, a legible fingerprint of the person with a written
203 notation identifying the fingerprint and the reason why the [~~thumb~~] index finger's print was
204 unavailable;

205 (e) the amount loaned on or paid for the article, or the article for which it was traded;

206 (f) the identification of the pawn or secondhand business owner or the employee,
207 whoever is making the register entry; and

208 (g) an accurate description of the article of property, including available identifying
209 marks such as:

210 (i) names, brand names, numbers, serial numbers, model numbers, color,
211 manufacturers' names, and size;

- 212 (ii) metallic composition, and any jewels, stones, or glass;
- 213 (iii) any other marks of identification or indicia of ownership on the article;
- 214 (iv) the weight of the article, if the payment is based on weight;
- 215 (v) any other unique identifying feature;
- 216 (vi) gold content, if indicated; and
- 217 (vii) if multiple articles of a similar nature are delivered together in one transaction and
- 218 the articles do not bear serial or model numbers and do not include precious metals or
- 219 gemstones, such as musical or video recordings, books, or hand tools, the description of the
- 220 articles is adequate if it includes the quantity of the articles and a description of the type of
- 221 articles delivered.

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

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

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

233 Section 4. Section **13-32a-106.5** is amended to read:

234 **13-32a-106.5. Confidentiality of pawn and purchase transactions.**

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

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

242 (b) investigating a possible violation of the record keeping or reporting requirements of

243 this chapter when the local law enforcement official, based on a review of the records and
244 information received, has reason to believe that a violation has occurred;

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

250 (i) a description of the property;

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

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

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

256 (e) responding to a request from an insurance company under Subsection (1)(c), which
257 shall be accompanied by a police report that has been filed concerning the described property.

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

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

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

264 Section 5. Section **13-32a-109.5** is amended to read:

265 **13-32a-109.5. Seizure of property.**

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

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

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

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

273 (ii) provides the date of the seizure request;

- 274 (iii) provides the reason for the seizure [~~under Section 13-32a-109.8~~];
- 275 (iv) describes the article to be seized;
- 276 (v) states each reason the article is necessary during the course of a criminal
- 277 investigation [~~under Section 13-32A-109.8~~]; and
- 278 (vi) includes any information that facilitates the pawnbroker's ability to track the article
- 279 when the prosecution agency takes over the case.

280 (2) If the purpose for the seizure of an article under this section is terminated before

281 final disposition of the criminal case and the property is no longer needed as evidence, the law

282 enforcement agency that required the seizure shall within 15 days after the property is no

283 longer needed as evidence:

- 284 (a) notify the pawn or secondhand business in writing that the purpose for the seizure
- 285 has been terminated and the property is available for return to the pawn or secondhand
- 286 business; or
- 287 (b) return the article to the pawn or secondhand business.

288 (3) If the law enforcement agency seizing the pawned or sold property is not the local

289 law enforcement agency, the seizing agency shall, in addition to compliance with Subsection

290 (1):

- 291 (a) notify the local law enforcement agency prior to any seizure; and
- 292 (b) facilitate the seizure of the pawned property in cooperation with the local law
- 293 enforcement agency to provide the pawnshop or secondhand business the ability to monitor the
- 294 proceedings [~~under Section 13-32a-109.8~~].

295 Section 6. Section **13-32a-110** is amended to read:

296 **13-32a-110. Penalties.**

- 297 (1) A violation of any of the following sections is subject to a civil penalty of not more
- 298 than \$500:
- 299 (a) Section 13-32a-104, register required to be maintained;
 - 300 (b) Section 13-32a-106, transaction information provided to law enforcement;
 - 301 (c) Section 13-32a-108, retention of records;
 - 302 (d) Section 13-32a-109, holding period for pawned articles;
 - 303 (e) Section 13-32a-111, payment of fees as required; or
 - 304 (f) Section 13-32a-112, training requirements for pawn, secondhand, and coin dealer

305 business employees and officers of participating law enforcement agencies.

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

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

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

313 Section 7. Section **13-32a-110.5** is enacted to read:

314 **13-32a-110.5. Transactions with certain persons prohibited.**

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

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

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

319 Section 8. Section **13-32a-111** is amended to read:

320 **13-32a-111. Fees to fund training and central database.**

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

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

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

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

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

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

335 (b) On and after January 1, 2013, each law enforcement agency that participates in the

336 use of the database shall annually pay to the division a fee of \$3 per sworn law enforcement
337 officer who is employed by the agency as of January 1 of that year. The fee shall be deposited
338 in the account.

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

341 (4) (a) (i) If a law enforcement agency outside Utah requests access to the central
342 database, the requesting agency shall pay a yearly fee of \$750 for the fiscal year beginning July
343 1, 2006, which shall be deposited in the account.

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

347 (b) The board may establish the fee amount for fiscal years beginning on and after July
348 1, 2007 under Section 63J-1-504.

349 Section 9. Section **13-32a-112** is amended to read:

350 **13-32a-112. Secondhand Merchandise Advisory Board -- Membership -- Duties --**
351 **Providing training -- Records of compliance -- Training compliance -- Rulemaking.**

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

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

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

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

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

358 [~~1~~] (e) three representatives from the pawnshop industry, [~~two~~] three representatives
359 from the secondhand merchandise business industry, and one representative from the coin
360 dealer industry who are all appointed by the director of the Utah Commission on Criminal and
361 Juvenile Justice and who represent three separate pawnshops, [~~two~~] three separate secondhand
362 merchandise dealers, and one coin dealer, each of which are owned by a separate person or
363 entity;

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

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

367 secondhand businesses and who is appointed by the board members under Subsections (1)(a)
368 through ~~[(d)]~~ (e); ~~[and]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

397 (c) a roster of software programs for pawn and secondhand businesses setting out

398 minimum basic requirements for functionality.

399 (9) Pawn and secondhand businesses may file with the board complaints regarding law
400 enforcement agency practices perceived to be inconsistent with this chapter. The board may
401 refer the complaints to the division.

402 Section 10. Section **13-32a-112.5** is amended to read:

403 **13-32a-112.5. Division may exempt certain businesses by rule.**

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

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

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

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

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

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

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

418 Section 11. Section **13-32a-115** is enacted to read:

419 **13-32a-115. Investigation phase and victim's responsibilities.**

420 (1) If the property pawned or sold to a pawn or secondhand business is the subject of a
421 criminal investigation and a hold has been placed on the property under Section 13-32a-109,
422 the original victim shall do the following to establish a claim:

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

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

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

428 (i) claims ownership of the property;

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

430 (iii) identifies the perpetrator if known.

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

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

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

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

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

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

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

452 Section 12. Section **13-32a-116** is enacted to read:

453 **13-32a-116. Property disposition -- Property subject to prosecution.**

454 (1) When any property that is pawned or sold to a pawn or secondhand business, is the
455 subject of a criminal proceeding, and has been seized by law enforcement pursuant to Section
456 13-32a-115, the prosecuting agency shall notify the seizing agency, the original victim, and the
457 pawn or secondhand business if it determines the article is no longer needed as evidence
458 pending resolution of the criminal case.

459 (2) (a) If the property is no longer needed as evidence, the original victim and the pawn

460 or secondhand business from which the property was seized may choose to resolve the matter
461 pursuant to Subsection 13-32a-115(2)(b) within 10 days of notice being given that the property
462 is no longer needed.

463 (b) The original victim shall notify the seizing law enforcement agency of any agreed
464 upon resolution and the seizing agency shall act accordingly.

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

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

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

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

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

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

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

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

484 (c) the proof of ownership of the property and compliance with Subsection
485 13-32a-115(1) by the original victim;

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

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

- 491 (5) Upon conclusion of the property disposition hearing the court may:
492 (a) order the return of the evidence to the original victim or to the pawn or secondhand
493 business as it determines appropriate; and
494 (b) make an initial finding of restitution for the original victim or the pawn or
495 secondhand business pending resolution of the criminal case.
496 (6) The court's determination of possession or restitution is a continuing order subject
497 to change or modification until the final resolution of the case.

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

499 **13-32a-117. Property disposition if no criminal charges filed -- Administrative**
500 **hearing.**

- 501 (1) The original victim or the pawn or secondhand business may request an
502 administrative property disposition hearing with the Division of Consumer Protection if:
503 (a) more than 30 days have passed since:
504 (i) the law enforcement agency placed hold on the property; or
505 (ii) the property was seized by the law enforcement agency; and
506 (b) an agreement pursuant to Section 13-32a-115(2)(b) has not been reached.
507 (2) The original victim shall provide to the Division of Consumer Protection at the
508 hearing under this section a copy of the sworn statement taken pursuant to Section 13-32a-115.
509 (3) (a) The Division of Consumer Protection shall notify the law enforcement agency
510 in writing of the request for a property disposition hearing.
511 (b) The law enforcement agency shall forward the notice to the prosecution agency
512 having jurisdiction over the case involving the property.
513 (c) (i) The prosecution agency shall, within five business days of receiving the notice,
514 make an initial determination pursuant to Section 77-24-2 and this chapter of whether
515 continued hold or seizure regarding the property as evidence in a criminal trial is necessary.
516 (ii) If the prosecuting agency determines the property is no longer needed as evidence,
517 the law enforcement agency shall notify in writing the pawn or secondhand business and the
518 original victim of the prosecuting agency's determination as soon as reasonably possible.
519 (4) (a) Within 30 days after receiving the request and notification from law
520 enforcement that the property is not needed as evidence pursuant to Section 77-24-2 and this
521 chapter, the Division of Consumer Protection shall schedule an adjudicative hearing in

522 accordance with Title 63G, Chapter 4, Administrative Procedures Act, to determine ownership
523 of the claimed property. The division shall provide written notice of the hearing to the pawn or
524 secondhand business and the original victim.

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

527 (i) the proof of ownership of the property and compliance with Subsection
528 13-32a-115(1) by the original victim;

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

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

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

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

540 Section 14. Section **77-24-2** is amended to read:

541 **77-24-2. Property not needed as evidence -- Return procedure.**

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

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

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

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

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

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

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

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

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

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

574 Section 15. **Repealer.**

575 This bill repeals:

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