

**Senator Daniel W. Thatcher** proposes the following substitute bill:

**SECONDHAND SALES AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

House Sponsor: Lee B. Perry

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

► provides an exemption to the 15-day holding period for retail media items that are the subject of a store credit transaction and that do not contain:

- a serial number or other identifiable marks; or
- any identifiable marks that appear to have been intentionally defaced.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**13-32a-102**, as last amended by Laws of Utah 2013, Chapters 124 and 187

**13-32a-109**, as last amended by Laws of Utah 2013, Chapter 124

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

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

28 **13-32a-102. Definitions.**

29 As used in this chapter:

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

31 Restricted Account created in Section [13-32a-113](#).

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

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

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

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

36 distinguished from new items of a similar nature; and

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

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

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

42 (5) "Central database" or "database" means the electronic database created and  
43 operated under Section [13-32a-105](#).

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

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

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

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

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

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

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

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

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

59 (10) "Identification" means a valid U.S. federal or state-issued photo ID, including a  
60 U.S. passport, a U.S. passport card, a U.S. military ID, and a driver license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

95 (22) "Retail media item" means recorded music, a movie, or a video game that is  
96 produced and distributed in hard copy format for retail sale.

97 [~~22~~] (23) "Scrap jewelry" means any item purchased solely:

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

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

100 [~~23~~] (24) (a) "Secondhand merchandise dealer" means an owner or operator of a  
101 business that:

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

104 (ii) does not function as a pawnbroker.

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

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

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

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

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

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

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

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

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

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

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

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

127 (xii) any dealer as defined in Section 76-6-1402, which concerns scrap metal and  
128 secondary metals; or

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

130 (A) sold at wholesale in bulk packaging;

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

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

133 (25) "Store credit transaction" means a consumer transaction with a retail

134 establishment that involves a credit to the customer towards purchases with that retail

135 establishment, excluding transferable gift cards.

136 Section 2. Section 13-32a-109 is amended to read:

137 **13-32a-109. Holding period for articles -- Penalty.**

138 (1) (a) A pawnbroker may sell an article pawned to the pawnbroker if:

139 (i) 15 days have passed since the day on which the contract between the pawnbroker  
140 and the pledgor was executed;

141 (ii) the contract period between the pawnbroker and the pledgor has expired; and

142 (iii) the pawnbroker has complied with the requirements of Section 13-32a-106

143 regarding reporting to the central database and Section 13-32a-103.

144 (b) If an article, including scrap jewelry, is purchased by a pawn or secondhand  
145 business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article  
146 after the pawn or secondhand business or coin dealer has held the article for 15 days and  
147 complied with the requirements of Section 13-32a-106 regarding reporting to the central  
148 database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are  
149 not required to hold;

150 (i) precious metals or coins under this Subsection (1)(b)[-]; or  
151 (ii) a retail media item that is the subject of a store credit transaction and that does not  
152 include:

153 (A) a serial number or other identifying numbers or marks; or  
154 (B) a serial number or other identifying numbers or marks that appear to be  
155 intentionally defaced.

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

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

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

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

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

169 (a) states the active case number;

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

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

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

176 (4) The initial hold by a law enforcement agency is for a period of 90 days. If the  
177 article is not seized by the law enforcement agency, the article shall remain in the custody of  
178 the pawn or secondhand business and is subject to the hold unless exigent circumstances  
179 require the purchased or pawned article to be seized by the law enforcement agency.

180 (5) (a) A law enforcement agency may extend any hold for up to an additional 90 days

181 when exigent circumstances require the extension.

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

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

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

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

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

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

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

197 (8) If the law enforcement agency does not notify the pawn or secondhand business  
198 that a hold on an item has expired, the pawn or secondhand business shall send a letter by  
199 registered or certified mail to the law enforcement agency that ordered the hold and inform the  
200 agency that the holding period has expired. The law enforcement agency shall respond within  
201 30 days by:

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

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

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

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

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

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

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

215           (11) A violation of this section is a class B misdemeanor and is also subject to civil  
216 penalties under Section [13-32a-110](#).