

SECONDHAND SALES AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: _____

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 regarding 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-104, as last amended by Laws of Utah 2014, Chapter 189

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

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



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

29 **13-32a-102. Definitions.**

30 As used in this chapter:

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

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

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

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

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

36 (c) that is furniture or other decorative objects produced in a previous time period, as
37 distinguished from new items of a similar nature; and

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

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

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

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

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

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

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

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

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

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

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

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

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

59 Department of Commerce.

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

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

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

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

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

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

72 ~~[(15)]~~ (14) "Pawn and secondhand business" means any business operated by a
73 pawnbroker or secondhand merchandise dealer, or the owner or operator of the business.

74 ~~[(14)]~~ (15) "Pawnbroker" means a person whose business engages in the following
75 activities:

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

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

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

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

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

85 ~~[(18)]~~ (16) "Pawnshop" means the physical location or premises where a pawnbroker
86 conducts business.

87 ~~[(16)]~~ (17) "Pawn ticket" means a document upon which information regarding a pawn
88 transaction is entered when the pawn transaction is made.

89 ~~[(17)]~~ (18) "Pawn transaction" means an extension of credit in which an individual

90 delivers property to a pawnbroker for an advance of money and retains the right to redeem the
91 property for the redemption price within a fixed period of time.

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

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

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

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

99 [~~(22)~~] (23) "Scrap jewelry" means any item purchased solely:

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

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

102 [~~(23)~~] (24) (a) "Secondhand merchandise dealer" means an owner or operator of a
103 business that:

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

106 (ii) does not function as a pawnbroker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

132 (A) sold at wholesale in bulk packaging;

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

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

135 (25) "Store credit transaction" means a consumer transaction with a retail
136 establishment that involves a credit given to the customer toward purchases with that retail
137 establishment, excluding transferable gift cards.

138 Section 2. Section 13-32a-104 is amended to read:

139 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
140 **items -- Prohibition against pawning or selling certain property.**

141 (1) Every pawnbroker or secondhand merchandise dealer shall keep a register of each
142 article of property a person pawns or sells to the pawnbroker or secondhand merchandise
143 dealer, except as provided in Subsection 13-32a-102~~[(23)]~~(24)(b). Every pawn and
144 secondhand business owner or operator, or his employee, shall enter the following information
145 regarding every article pawned or sold to the owner or employee:

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

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

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

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

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

151 (ii) the number of the driver license or other form of positive identification presented

152 by the person, and notations of discrepancies if the person's physical description, including
153 gender, height, weight, race, age, hair color, and eye color, does not correspond with
154 identification provided by the person;

155 (iii) the person's signature; and

156 (iv) a legible fingerprint of the person's right index finger, or if the right index finger
157 cannot be fingerprinted, a legible fingerprint of the person with a written notation identifying
158 the fingerprint and the reason why the index finger's print was unavailable;

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

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

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

164 (i) names, brand names, numbers, serial numbers, model numbers, color,
165 manufacturers' names, and size;

166 (ii) metallic composition, and any jewels, stones, or glass;

167 (iii) any other marks of identification or indicia of ownership on the article;

168 (iv) the weight of the article, if the payment is based on weight;

169 (v) any other unique identifying feature;

170 (vi) gold content, if indicated; and

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

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

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

182 (b) If an individual attempts to sell or pawn property to a business regulated under this

183 chapter and the employee or owner of the business knows or has reason to know that the
184 property is subject to Title 77, Chapter 24a, Lost or Mislaid Personal Property, the employee or
185 owner shall advise the individual of the requirements of Title 77, Chapter 24a, Lost or Mislaid
186 Personal Property, and may not receive the property in pawn or sale.

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

189 Section 3. Section 13-32a-109 is amended to read:

190 **13-32a-109. Holding period for articles -- Penalty.**

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

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

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

195 (iii) the pawnbroker has complied with the requirements of Section 13-32a-106
196 regarding reporting to the central database and Section 13-32a-103.

197 (b) If an article, including scrap jewelry, is purchased by a pawn or secondhand
198 business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article
199 after the pawn or secondhand business or coin dealer has held the article for 15 days and
200 complied with the requirements of Section 13-32a-106 regarding reporting to the central
201 database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are
202 not required to hold:

203 (i) precious metals or coins under this Subsection (1)(b)[:]; or

204 (ii) a retail media item that is the subject of a store credit transaction and that does not
205 include:

206 (A) a serial number or other identifying numbers or marks; or

207 (B) a serial number or other identifying numbers or marks that appear to be
208 intentionally defaced.

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

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

213 (ii) If the article was sold to the pawn or secondhand business, the law enforcement

214 agency may require the article be held if the pawn or secondhand business has not sold the
215 article.

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

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

222 (a) states the active case number;

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

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

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

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

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

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

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

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

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

244 (a) notify the pawn or secondhand business in writing that the hold or seizure has been

245 terminated;

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

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

250 (8) If the law enforcement agency does not notify the pawn or secondhand business
251 that a hold on an item has expired, the pawn or secondhand business shall send a letter by
252 registered or certified mail to the law enforcement agency that ordered the hold and inform the
253 agency that the holding period has expired. The law enforcement agency shall respond within
254 30 days by:

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

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

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

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

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

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

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel