

PAWNSHOP AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill modifies provisions of the Pawnshop and Secondhand Merchandise Transaction Information Act regarding claims to property and provisions regarding the membership of the Secondhand Merchandise Advisory Board.

Highlighted Provisions:

This bill:

▶ provides that when pawned property that is held as evidence is no longer needed, and the case is resolved by a plea or guilty verdict, the property shall be returned to the original victim and no costs may be imposed;

▶ provides that if the seized property is valued at less than \$500 and is not necessary for the prosecution, or if the hold period expires, the property shall be returned to the original victim;

▶ provides that if the property is valued at \$500 or more and is not necessary for the prosecution, or if the hold period expires, the pawn or secondhand business shall transfer the article to the original victim within 15 days;

▶ allows the pawn or secondhand business to request a hearing to contest the court finding that the property is to be returned to the original victim;

▶ modifies the terms of membership and board functions regarding the Secondhand Merchandise Advisory Board; and

▶ provides an exemption to the 15-day holding period regarding retail media items if



28 the items do not contain any identifiable marks that appear to have been intentionally defaced.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-32a-102**, as last amended by Laws of Utah 2013, Chapters 124 and 187

36 **13-32a-102.5**, as last amended by Laws of Utah 2012, Chapter 284

37 **13-32a-109**, as last amended by Laws of Utah 2013, Chapter 124

38 **13-32a-109.5**, as last amended by Laws of Utah 2012, Chapter 284

39 **13-32a-112**, as last amended by Laws of Utah 2012, Chapter 284

40 **13-32a-115**, as last amended by Laws of Utah 2014, Chapters 144 and 189

41 **13-32a-116**, as enacted by Laws of Utah 2012, Chapter 284

42 ENACTS:

43 **13-32a-112.3**, Utah Code Annotated 1953

44 REPEALS AND REENACTS:

45 **13-32a-117**, as last amended by Laws of Utah 2014, Chapter 189



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

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

49 **13-32a-102. Definitions.**

50 As used in this chapter:

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

52 Restricted Account created in Section **13-32a-113**.

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

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

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

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

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

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

61 (4) "Board" means the ~~[Pawnshop and]~~ Secondhand Merchandise Advisory Board
62 created by this chapter.

63 (5) "Business credit transaction" means a consumer transaction with a retail business
64 that involves a credit given to the customer toward purchases with that retail business, but does
65 not include transferable gift cards.

66 ~~[(5)]~~ (6) "Central database" or "database" means the electronic database created and
67 operated under Section [13-32a-105](#).

68 ~~[(6)]~~ (7) "Coin" means a piece of currency, usually metallic and usually in the shape of
69 a disc that is:

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

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

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

73 ~~[(7)]~~ (8) "Coin dealer" means a person or business whose sole business activity is the
74 selling and purchasing of coins and precious metals.

75 ~~[(8)]~~ (9) "Commercial grade precious metals" or "precious metals" means ingots,
76 monetized bullion, art bars, medallions, medals, tokens, and currency that are marked by the
77 refiner or fabricator indicating their fineness and include:

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

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

81 ~~[(9)]~~ (10) "Division" means the Division of Consumer Protection in Title 13, Chapter
82 1, Department of Commerce.

83 ~~[(10)]~~ (11) "Identification" means a valid ~~[U.S.]~~ United States federal or state-issued
84 photo ~~[ID]~~ personal identification, including a ~~[U.S.]~~ United States passport, a ~~[U.S.]~~ United
85 States passport card, a ~~[U.S.]~~ United States military ~~[ID]~~ personal identification, and a driver
86 license.

87 ~~[(11)]~~ (12) "Local law enforcement agency" means the law enforcement agency that
88 has direct responsibility for ensuring compliance with central database reporting requirements
89 for the jurisdiction where the pawnshop or secondhand business is located.

90 ~~[(12)]~~ (13) "Misappropriated" means stolen, embezzled, converted, obtained by theft,
91 or otherwise appropriated without authority of the lawful owner.

92 ~~[(13)]~~ (14) "Original victim" means a victim who is not a party to the pawn or sale
93 transaction and includes:

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

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

97 ~~[(14)]~~ (15) "Pawnbroker" means a person whose business engages in the following
98 activities:

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

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

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

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

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

108 ~~[(15)]~~ (16) "Pawn and secondhand business" means any business operated by a
109 pawnbroker or secondhand merchandise dealer, or the owner or operator of the business.

110 ~~[(18)]~~ (17) "Pawnshop" means the physical location or premises where a pawnbroker
111 conducts business.

112 ~~[(16)]~~ (18) "Pawn ticket" means a document upon which information regarding a pawn
113 transaction is entered when the pawn transaction is made.

114 ~~[(17)]~~ (19) "Pawn transaction" means an extension of credit in which an individual
115 delivers property to a pawnbroker for an advance of money and retains the right to redeem the
116 property for the redemption price within a fixed period of time.

117 ~~[(19)]~~ (20) "Pledgor" means a person who conducts a pawn transaction with a
118 pawnshop.

119 ~~[(20)]~~ (21) "Property" means any tangible personal property.

120 ~~[(21)]~~ (22) "Register" means the record of information required under this chapter to be

121 maintained by pawn and secondhand businesses. The register is an electronic record that is in a
122 format that is compatible with the central database.

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

125 [~~(22)~~] (24) "Scrap jewelry" means any item purchased solely:

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

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

128 [~~(23)~~] (25) (a) "Secondhand merchandise dealer" means an owner or operator of a
129 business that:

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

132 (ii) does not function as a pawnbroker.

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

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

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

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

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

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

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

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

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

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

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

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

155 (xii) any dealer as defined in Section [76-6-1402](#), which concerns scrap metal and
156 secondary metals; or

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

158 (A) sold at wholesale in bulk packaging;

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

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

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

162 **13-32a-102.5. Administration and enforcement.**

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

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

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

169 (4) Municipal and county law enforcement agencies, prosecutorial agencies, and
170 governmental agencies may enforce the criminal and civil provisions of this chapter, except as
171 provided under Section [13-32a-117](#).

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

173 **13-32a-109. Holding period for articles -- Return of articles -- Penalty.**

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

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

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

178 (iii) the pawnbroker has complied with the requirements of Section [13-32a-106](#)
179 regarding reporting to the central database and Section [13-32a-103](#).

180 (b) If an article, including scrap jewelry, is purchased by a pawn or secondhand
181 business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article
182 after the pawn or secondhand business or coin dealer has held the article for 15 days and

183 complied with the requirements of Section 13-32a-106 regarding reporting to the central
184 database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are
185 not required to hold an article as described under Subsection (1)(c).

186 (c) A pawn, secondhand, or coin dealer business is not required to hold an article:

187 (i) that consists of precious metals or coins under this Subsection (1)[(b)](c); or

188 (ii) that is a retail media item that is the subject of a business credit transaction and that
189 does not include any retail media item that has a serial number or one or more identifying
190 numerals, letters, or marks that appear to be intentionally defaced.

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

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

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

199 ~~(d)~~ (e) If the law enforcement agency requesting a hold on property under this
200 Subsection (1) is not the local law enforcement agency, the requesting law enforcement agency
201 shall notify the local law enforcement agency of the request and shall also notify the pawn or
202 secondhand business.

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

206 (a) states the active case number;

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

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

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

213 (4) The initial hold by a law enforcement agency is for a period of 90 days. If the

214 article is not seized by the law enforcement agency, the article shall remain in the custody of
215 the pawn or secondhand business and is subject to the hold unless exigent circumstances
216 require the purchased or pawned article to be seized by the law enforcement agency.

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

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

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

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

226 (7) When the purpose for the hold on or seizure of an article is terminated by
227 commencement of a criminal action for which possession of the article as evidence at trial is
228 not necessary, or the hold period for the article has expired without commencement of a
229 criminal action, the law enforcement agency requiring the hold or seizure shall within 15 days
230 after the termination:

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

233 (b) return the article subject to the seizure to the pawn or secondhand business if the
234 article was seized; or

235 (c) if the article [~~is not returned to the pawn or secondhand business;~~] was the subject
236 of a pawn or sale transaction valued at less than \$500, the law enforcement agency has
237 identified an original victim, and the original victim has complied with Subsection
238 13-32a-115(1):

239 (i) the law enforcement agency shall return the article to the original victim and shall
240 advise the pawn or secondhand business either in writing or electronically of the specific
241 [alternative] disposition of the article, including the identification of the original victim; or

242 (ii) if the law enforcement agency has not seized the article, the law enforcement
243 agency shall issue a written or electronic letter of release to the pawn or secondhand business
244 identifying the original victim and directing the pawn or secondhand business to immediately

245 release the article to the original victim at no cost to the original victim.

246 (8) A pawn or secondhand business that releases any article as required under
247 Subsection (7) may contest the release of the article as provided in Section 13-32a-117.

248 (9) If the article under Subsection (7) was the subject of a pawn or sale transaction
249 valued at more than \$500, the law enforcement agency has identified an original victim, and
250 the victim has complied with Subsection 13-32a-115(1):

251 (a) The law enforcement agency shall issue a written or electronic letter of release to
252 the pawn or secondhand business identifying the original victim and directing the release of the
253 article to the original victim within 15 days after receipt of the notification and at no cost to the
254 original victim, except as provided under Subsection (9)(b).

255 (b) The pawn or secondhand business shall return the article to the original owner as
256 directed by the letter of release, unless the pawn or secondhand business contests the return of
257 the article.

258 (c) If the pawn or secondhand business contests the return of the article in compliance
259 with the requirements of Section 13-32a-117, the pawn or secondhand business shall continue
260 to hold the article until disposition of the contested article is determined under Section
261 13-32a-117. The pawn or secondhand business shall then comply with the determination.

262 ~~[(8)]~~ (10) If the law enforcement agency does not notify the pawn or secondhand
263 business that a hold on an item has expired, the pawn or secondhand business shall send a letter
264 by registered or certified mail to the law enforcement agency that ordered the hold and inform
265 the agency that the holding period has expired. The law enforcement agency shall respond
266 within 30 days by:

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

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

271 ~~[(9)]~~ (11) The written notice under Subsection ~~[(8)]~~ (10)(b) is considered provided
272 when:

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

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

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

278 ~~[(10)]~~ (12) If the law enforcement agency does not respond within 30 days under
279 Subsection ~~[(8)]~~ (10), the pawn or secondhand business may manage the item as if acquired in
280 the ordinary course of business.

281 ~~[(11)]~~ (13) A violation of ~~[this section]~~ Subsection (1), (3), (4), (6), or (7) by a
282 pawnbroker or a secondhand dealer is a class B misdemeanor and is also subject to civil
283 penalties under Section 13-32a-110.

284 Section 4. Section 13-32a-109.5 is amended to read:

285 **13-32a-109.5. Seizure of property -- Notification to pawn or secondhand business.**

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

290 ~~[(a)]~~ (1) notify the pawnshop of the specific item to be seized; and

291 ~~[(b)]~~ (2) issue to the pawnshop a seizure ticket in a form approved by the division and
292 that:

293 ~~[(i)]~~ (a) provides the active case number related to the item to be seized;

294 ~~[(ii)]~~ (b) provides the date of the seizure request;

295 ~~[(iii)]~~ (c) provides the reason for the seizure;

296 ~~[(iv)]~~ (d) describes the article to be seized;

297 ~~[(v)]~~ (e) states each reason the article is necessary during the course of a criminal
298 investigation; and

299 ~~[(vi)]~~ (f) includes any information that facilitates the pawnbroker's ability to track the
300 article when the prosecution agency takes over the case.

301 ~~[(2) If the purpose for the seizure of an article under this section is terminated before
302 final disposition of the criminal case and the property is no longer needed as evidence, the law
303 enforcement agency that required the seizure shall within 15 days after the property is no
304 longer needed as evidence:]~~

305 ~~[(a) notify the pawn or secondhand business in writing that the purpose for the seizure
306 has been terminated and the property is available for return to the pawn or secondhand~~

307 business; or]

308 [~~(b) return the article to the pawn or secondhand business.~~]

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

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

311 ~~(1):~~]

312 [~~(a) notify the local law enforcement agency prior to any seizure; and]~~

313 [~~(b) facilitate the seizure of the pawned property in cooperation with the local law~~

314 enforcement agency to provide the pawnshop or secondhand business the ability to monitor the

315 proceedings.]

316 Section 5. Section **13-32a-112** is amended to read:

317 **13-32a-112. Secondhand Merchandise Advisory Board -- Membership --**

318 **Quorum.**

319 (1) There is created within the division the Secondhand Merchandise Advisory Board.

320 The board consists of 13 voting members and one nonvoting member:

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

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

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

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

325 (e) three representatives from the pawnshop industry, three representatives from the

326 secondhand merchandise business industry, and one representative from the coin dealer

327 industry who are all appointed by the director of the Utah Commission on Criminal and

328 Juvenile Justice and who represent three separate pawnshops, three separate secondhand

329 merchandise dealers, and one coin dealer, each of which are owned by a separate person or

330 entity;

331 (f) one law enforcement officer who is appointed by the board members under

332 Subsections (1)(a) through (e);

333 (g) one law enforcement officer whose work regularly involves pawn and secondhand

334 businesses and who is appointed by the board members under Subsections (1)(a) through (e);

335 or

336 (h) one representative from the central database, who is nonvoting.

337 [~~(2)(a) The board shall elect one voting member as the chair of the board by a majority~~

338 of the members present at the board's first meeting each year.]
339 ~~[(b) The chair shall preside over the board for a period of one year.]~~
340 ~~[(c) The advisory board shall meet quarterly upon the call of the chair.]~~
341 ~~[(d) A quorum of nine members is required for the board to take action.]~~
342 ~~[(3) (a) The board shall conduct quarterly training sessions regarding compliance with~~
343 ~~this chapter and other applicable state laws for any person who owns or is employed by a pawn~~
344 ~~or secondhand business subject to this chapter.]~~
345 ~~[(b) Each training session shall provide no fewer than two hours of training.]~~
346 ~~[(4) (a) Each pawn, secondhand, and coin dealer business in operation as of January 1~~
347 ~~shall ensure one or more persons employed by the pawn or secondhand business each~~
348 ~~participate in no fewer than two hours of compliance training within that year.]~~
349 ~~[(b) This requirement does not limit the number of employees, directors, or officers of~~
350 ~~a pawn or secondhand business who attend the compliance training.]~~
351 ~~[(5) The board shall monitor and keep a record of the hours of compliance training~~
352 ~~accrued by each pawn or secondhand business.]~~
353 ~~[(6) The board shall provide each pawn or secondhand business with a certificate of~~
354 ~~compliance upon completion by an employee of the two hours of compliance training under~~
355 ~~Subsection (4).]~~
356 ~~[(7) (a) Each law enforcement agency that has a pawn or secondhand business located~~
357 ~~within its jurisdiction shall ensure that at least one of its officers completes two hours of~~
358 ~~compliance training yearly.]~~
359 ~~[(b) Subsection (7)(a) does not limit the number of law enforcement officers who~~
360 ~~attend the compliance training.]~~
361 ~~[(8) The board may propose to the division administrative rules establishing:]~~
362 ~~[(a) pawn and secondhand business industry standards for best practices;]~~
363 ~~[(b) standardized property descriptions for the database created under this chapter; and]~~
364 ~~[(c) a roster of software programs for pawn and secondhand businesses setting out~~
365 ~~minimum basic requirements for functionality.]~~
366 ~~[(9) Pawn and secondhand businesses may file with the board complaints regarding~~
367 ~~law enforcement agency practices perceived to be inconsistent with this chapter. The board~~
368 ~~may refer the complaints to the Peace Officers Standards and Training Division.]~~

369 (2) (a) Members shall be appointed for terms of two years each.

370 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
371 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
372 board members are staggered so that no more than seven members of the board are appointed
373 every two years.

374 (c) (i) Notwithstanding Subsection (2)(a), the term of a board member who is
375 appointed before January 1, 2012, expires on December 31, 2016.

376 (ii) On January 2, 2017, the governor shall appoint or reappoint board members in
377 accordance with this section.

378 (3) Each member is eligible for reappointment.

379 (4) A board member shall continue in office until the expiration of the board member's
380 term and until the board member's successor is appointed, but not more than 90 days after the
381 expiration of the board member's term.

382 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
383 appointed for the unexpired term by the process required under Section [13-32a-112](#) for that
384 position on the board.

385 (6) The board shall elect a chair and vice chair on or before February 1 of each year
386 from the board's voting membership.

387 (7) A member may not receive compensation or benefits for the member's service, but
388 may receive per diem and travel expenses in accordance with:

389 (a) Section [63A-3-106](#);

390 (b) Section [63A-3-107](#); and

391 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
392 [63A-3-107](#).

393 (8) (a) The board shall meet quarterly.

394 (b) Meetings shall be held on the call of the chair or any of the members.

395 (9) Nine members constitute a quorum at any meeting, and the action of a quorum is
396 the action of the board.

397 Section 6. Section **13-32a-112.3** is enacted to read:

398 **13-32a-112.3. Board duties -- Providing training -- Records of compliance --**
399 **Training compliance -- Rulemaking.**

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

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

404 (2) (a) Each pawn, secondhand, and coin dealer business in operation as of January 1
405 shall ensure that one or more persons employed by the pawn or secondhand business
406 participate in no less than two hours of compliance training within that year.

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

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

411 (4) The board shall provide each pawn or secondhand business with a certificate of
412 compliance upon completion by an employee of the two hours of compliance training under
413 Subsection (2).

414 (5) (a) Each law enforcement agency that has a pawn or secondhand business located
415 within the law enforcement agency's jurisdiction shall ensure that at least one of the law
416 enforcement agency's officers completes two hours of compliance training yearly.

417 (b) Subsection (5)(a) does not limit the number of law enforcement officers who attend
418 the compliance training.

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

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

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

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

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

427 Section 7. Section **13-32a-115** is amended to read:

428 **13-32a-115. Criminal investigation -- Prosecution -- Property disposition.**

429 (1) If the property pawned or sold to a pawn or secondhand business is the subject of a
430 criminal investigation and a hold has been placed on the property under Section **13-32a-109**,

431 the original victim shall do the following to establish a claim:

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

433 (b) if a police report has not already been filed for the original theft or loss of property,

434 file a police report, and provide for the law enforcement agency information surrounding the

435 original theft or loss of property; and

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

437 (i) claims ownership of the property;

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

439 (iii) identifies the perpetrator if known.

440 (2) The pawn or secondhand business shall retain possession of any property subject to

441 a hold until a criminal prosecution is commenced relating to the property for which the hold

442 was placed unless:

443 (a) during the course of a criminal investigation the actual physical possession by law

444 enforcement of an article purchased or pawned is essential for the purpose of fingerprinting the

445 property, chemical testing of the property, or if the property contains unique or sensitive

446 personal identifying information; or

447 (b) an agreement between the original victim and the pawn or secondhand business to

448 return the property is reached.

449 (3) (a) Upon the commencement of a criminal prosecution, any article subject to a hold

450 for investigation under this chapter may be seized by the law enforcement agency which

451 requested the hold.

452 (b) Subsequent disposition of the property shall be consistent with Section ~~[24-3-103~~

453 ~~regarding property not needed as evidence and this chapter.]~~ [13-32a-109](#) or Section

454 [13-32a-117](#).

455 ~~[(c) If a conflict exists between the provisions of Section 24-3-103 regarding property~~

456 ~~not needed as evidence and this chapter, this chapter takes precedence regarding property held~~

457 ~~by pawn or secondhand businesses.]~~

458 (4) At all times during the course of a criminal investigation and subsequent

459 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or

460 secondhand business subject to the hold unless a pawned or sold article has been seized by the

461 law enforcement agency pursuant to Section [13-32a-109.5](#).

462 Section 8. Section 13-32a-116 is amended to read:

463 **13-32a-116. Property disposition -- Property subject to prosecution -- Property**
464 **not used as evidence.**

465 [(1)] When any property that is pawned or sold to a pawn or secondhand business is the
466 subject of a criminal proceeding, and has been seized by law enforcement pursuant to Section
467 13-32a-115, the prosecuting agency shall notify the seizing agency, the original victim, and the
468 pawn or secondhand business if [it] the prosecuting agency determines the [article] property is
469 no longer needed as evidence pending resolution of the criminal case.

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

474 [(b) The original victim shall notify the seizing law enforcement agency and the pawn
475 or secondhand business of any agreed upon resolution and the seizing agency shall act
476 accordingly.]

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

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

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

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

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

493 ~~[(4) At the seized property disposition hearing the court shall take into consideration:]~~
494 ~~[(a) the evidentiary value of the property and the need for its use at trial;]~~
495 ~~[(b) whether alternative evidence, such as photographs, records, or serial numbers,~~
496 ~~make retention of the property unnecessary;]~~
497 ~~[(c) the proof of ownership of the property and compliance with Subsection~~
498 ~~13-32a-115(1) by the original victim;]~~
499 ~~[(d) whether retention of the property would create any undue hardship to the original~~
500 ~~victim; and]~~
501 ~~[(e) compliance by the pawn or secondhand business with the requirements of this~~
502 ~~chapter, and potential financial loss to the business if the property were returned to the original~~
503 ~~victim.]~~
504 ~~[(5) Upon conclusion of the property disposition hearing the court may: (a) order the~~
505 ~~return of the evidence to the original victim or to the pawn or secondhand business as it~~
506 ~~determines appropriate; and (b) make an initial finding of restitution for the original victim or~~
507 ~~the pawn or secondhand business pending resolution of the criminal case.]~~
508 ~~[(6) The court's determination of possession or restitution under Subsection (5) is a~~
509 ~~continuing order subject to change or modification until the final resolution of the case.]~~

510 Section 9. Section **13-32a-117** is repealed and reenacted to read:

511 **13-32a-117. Contested disposition of articles -- Procedure.**

512 (1) (a) If a pawn or secondhand business has received notice from a law enforcement
513 agency under Section 13-32a-109 that an article that is valued at less than \$500 in the pawn or
514 secondhand sale transaction has been or shall be returned to an identified original victim, the
515 pawn or secondhand business may contest the determination and seek a remedy under this
516 section by:

517 (i) returning the article as promptly as is reasonably possible to the identified original
518 victim as directed by the law enforcement agency and at no cost to the original victim;

519 (ii) giving notice to the original victim in person or by certified mail that the pawn or
520 secondhand business is contesting the determination to return the article to the original victim;

521 and

522 (iii) filing a complaint or petition in a district court of competent jurisdiction to
523 determine proper ownership of the returned article, including any damages incurred by the

524 pawn or secondhand business.

525 (b) The court shall determine proper ownership of the returned article under this
526 section by a preponderance of the evidence.

527 (c) The court shall award costs of the action, including reasonable attorney fees, to the
528 prevailing party.

529 (2) If a pawn or secondhand business has received notice from a law enforcement
530 agency under Section [13-32a-109](#) that an article that is valued at \$500 or more in the pawn or
531 secondhand sale transaction has been or shall be returned to an identified original victim, the
532 pawn or secondhand business may contest the determination by:

533 (a) continuing to hold the article pending further determination as provided in this
534 section; and

535 (b) giving notice to the original victim within 15 days in person or by certified mail
536 that the pawn or secondhand business is contesting the determination that the article is to be
537 returned to the original victim.

538 (3) (a) If the pawn or secondhand business is unable to reach a resolution with the
539 original victim regarding the article, the pawn or secondhand business may file a complaint or
540 petition with a district court of competent jurisdiction to determine ownership of the article,
541 including any damages.

542 (b) The court shall determine ownership of the article under this section by a
543 preponderance of the evidence.

544 (c) The court shall award costs of the action, including reasonable attorney fees, to the
545 prevailing party.

546 (4) A pawn or secondhand business is guilty of a class B misdemeanor if the pawn or
547 secondhand business:

548 (a) holds or sells an article in violation of a notification from a law enforcement agency
549 that the item is to be returned to an original victim; and

550 (b) does not comply with the requirements of this section within the time periods
551 specified in this section.