

1 **SECONDHAND MERCHANDISE DEALERS AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Rebecca P. Edwards**

5 Senate Sponsor: Deidre M. Henderson

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines "children's product" and "children's product resale business"; and
- 14 ▶ exempts children's product resale businesses from requirements regarding

15 secondhand merchandise dealers.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **13-32a-102**, as last amended by Laws of Utah 2016, Chapter 421

23 **13-32a-104**, as last amended by Laws of Utah 2014, Chapter 189

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

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

27 **13-32a-102. Definitions.**

28 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

43 (6) "Children's product" means a used item that is for the exclusive use of children, or
44 for the care of children, including clothing and toys.

45 (7) "Children's product resale business" means a business operating at a commercial
46 location and primarily selling children's products.

47 [~~(6)~~] (8) "Coin" means a piece of currency, usually metallic and usually in the shape of
48 a disc that is:

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

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

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

52 [~~(7)~~] (9) "Coin dealer" means a person or business whose sole business activity is the
53 selling and purchasing of coins and precious metals.

54 [~~(8)~~] (10) "Commercial grade precious metals" or "precious metals" means ingots,
55 monetized bullion, art bars, medallions, medals, tokens, and currency that are marked by the
56 refiner or fabricator indicating their fineness and include:

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

58 metals; or

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

60 ~~[(9)]~~ (11) "Division" means the Division of Consumer Protection in ~~[Title 13,]~~ Chapter
61 1, Department of Commerce.

62 ~~[(10)]~~ (12) "Identification" means a valid United States federal or state-issued photo
63 personal identification, including a United States passport, a United States passport card, ~~[U.S.]~~
64 United States military personal identification, and a driver license.

65 ~~[(11)]~~ (13) "Local law enforcement agency" means the law enforcement agency that
66 has direct responsibility for ensuring compliance with central database reporting requirements
67 for the jurisdiction where the pawnshop or secondhand business is located.

68 ~~[(12)]~~ (14) "Misappropriated" means stolen, embezzled, converted, obtained by theft,
69 or otherwise appropriated without authority of the lawful owner.

70 ~~[(13)]~~ (15) "Original victim" means a victim who is not a party to the pawn or sale
71 transaction and includes:

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

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

75 ~~[(15)]~~ (16) "Pawn and secondhand business" means any business operated by a
76 pawnbroker or secondhand merchandise dealer, or the owner or operator of the business.

77 ~~[(14)]~~ (17) "Pawnbroker" means a person whose business engages in the following
78 activities:

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

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

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

85 (d) deals in the purchase, exchange, or sale of used or secondhand merchandise or

86 personal property; or

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

88 ~~[(16)]~~ (18) "Pawnshop" means the physical location or premises where a pawnbroker
89 conducts business.

90 ~~[(17)]~~ (19) "Pawn ticket" means a document upon which information regarding a pawn
91 transaction is entered when the pawn transaction is made.

92 ~~[(18)]~~ (20) "Pawn transaction" means an extension of credit in which an individual
93 delivers property to a pawnbroker for an advance of money and retains the right to redeem the
94 property for the redemption price within a fixed period of time.

95 ~~[(19)]~~ (21) "Pledgor" means a person who conducts a pawn transaction with a
96 pawnshop.

97 ~~[(20)]~~ (22) "Property" means any tangible personal property.

98 ~~[(21)]~~ (23) "Register" means the record of information required under this chapter to be
99 maintained by pawn and secondhand businesses. The register is an electronic record that is in a
100 format that is compatible with the central database.

101 ~~[(22)]~~ (24) "Retail media item" means recorded music, a movie, or a video game that is
102 produced and distributed in hard copy format for retail sale.

103 ~~[(23)]~~ (25) "Scrap jewelry" means any item purchased solely:

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

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

106 ~~[(24)]~~ (26) (a) "Secondhand merchandise dealer" means an owner or operator of a
107 business that:

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

110 (ii) does not function as a pawnbroker.

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

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

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

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

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

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

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

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

123 (viii) any person offering [~~his~~] the person's own personal property for sale, purchase,
124 consignment, or trade via the Internet;

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

128 (x) any owner or operator of a retail business that:

129 (A) receives used merchandise as a trade-in for similar new merchandise; or

130 (B) receives used retail media items as a trade-in for similar new or used retail media
131 items;

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

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

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

138 (A) sold at wholesale in bulk packaging;

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

140 (C) regularly sold in bulk quantities as a recognized form of sale; or

141 (xiv) the owner or operator of a children's product resale business.

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

143 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
144 **items -- Prohibition against pawning or selling certain property.**

145 (1) [Every] A pawnbroker or secondhand merchandise dealer shall keep a register of
146 each article of property a person pawns or sells to the pawnbroker or secondhand merchandise
147 dealer, except as provided in Subsection ~~13-32a-102(23)~~(26)(b). [Every] A pawn and
148 secondhand business owner or operator, or ~~his~~ the owner's or operator's employee, shall enter
149 the following information regarding every article pawned or sold to the owner or employee:

- 150 (a) the date and time of the transaction;
- 151 (b) the pawn transaction ticket number, if the article is pawned;
- 152 (c) the date by which the article must be redeemed;
- 153 (d) the following information regarding the person who pawns or sells the article:
 - 154 (i) the person's name, residence address, and date of birth;
 - 155 (ii) the number of the driver license or other form of positive identification presented
156 by the person, and notations of discrepancies if the person's physical description, including
157 gender, height, weight, race, age, hair color, and eye color, does not correspond with
158 identification provided by the person;
 - 159 (iii) the person's signature; and
 - 160 (iv) a legible fingerprint of the person's right index finger, or if the right index finger
161 cannot be fingerprinted, a legible fingerprint of the person with a written notation identifying
162 the fingerprint and the reason why the index finger's print was unavailable;
- 163 (e) the amount loaned on or paid for the article, or the article for which it was traded;
- 164 (f) the identification of the pawn or secondhand business owner or the employee,
165 whoever is making the register entry; and
- 166 (g) an accurate description of the article of property, including available identifying
167 marks such as:
 - 168 (i) names, brand names, numbers, serial numbers, model numbers, color,
169 manufacturers' names, and size;

170 (ii) metallic composition, and any jewels, stones, or glass;
171 (iii) any other marks of identification or indicia of ownership on the article;
172 (iv) the weight of the article, if the payment is based on weight;
173 (v) any other unique identifying feature;
174 (vi) gold content, if indicated; and
175 (vii) if multiple articles of a similar nature are delivered together in one transaction and
176 the articles do not bear serial or model numbers and do not include precious metals or
177 gemstones, such as musical or video recordings, books, or hand tools, the description of the
178 articles is adequate if it includes the quantity of the articles and a description of the type of
179 articles delivered.

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

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

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

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