

**PAWNSHOP AND SECONDHAND MERCHANDISE
TRANSACTION INFORMATION ACT AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Commerce and Trade Code relating to the Pawnshop and Secondhand Merchandise Transaction Information Act.

Highlighted Provisions:

This bill:

▶ provides that when law enforcement places a hold on an article, but does not seize the article, the article shall remain in the custody of the pawn or secondhand business until there is a disposition of the case;

▶ requires a law enforcement agency to respond to a registered or certified letter from a pawn or secondhand business regarding an expired hold within 30 days by either:

- confirming the expiration of the holding period and releasing the hold; or
- providing written notice to the pawn or secondhand business that a court order has continued the period of time the item must be held;

▶ defines when a pawned or purchased article is necessary during the course of a criminal investigation;

▶ modifies procedures for return of an item to a pawn or secondhand business if the article is no longer needed for law enforcement purposes;

▶ provides procedures for a victim who unknowingly pawns a stolen item; and

▶ provides procedures for returning an article to a victim when the perpetrator is



28 known and when the perpetrator is not known.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-32a-109**, as last amended by Laws of Utah 2009, Chapter 272

36 **13-32a-109.5**, as last amended by Laws of Utah 2009, Chapter 272

37 **13-32a-109.8**, as last amended by Laws of Utah 2010, Chapter 378

38 **77-24-2**, as last amended by Laws of Utah 2005, Chapter 126



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

41 Section 1. Section **13-32a-109** is amended to read:

42 **13-32a-109. Holding period for articles.**

43 (1) (a) The pawnbroker may sell any article pawned to the pawnbroker:

44 (i) after the expiration of the contract period between the pawnbroker and the pledgor;

45 and

46 (ii) if the pawnbroker has complied with the requirements of Section 13-32a-106
47 regarding reporting to the central database and Section 13-32a-103.

48 (b) If an article, including scrap jewelry, is purchased by a pawn or secondhand
49 business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article
50 after the pawn or secondhand business or coin dealer has held the article for 15 days and
51 complied with the requirements of Section 13-32a-106 regarding reporting to the central
52 database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are
53 not required to hold precious metals or coins under this Subsection (1)(b).

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

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

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

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

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

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

67 (a) states the active case number;

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

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

71 (3) If an article is not seized by a law enforcement agency that has placed a hold on the
72 property, the property ~~may~~ shall remain in the custody of the pawn or secondhand business
73 until ~~[further]~~ there is a disposition ~~[by the law enforcement agency, and as]~~ consistent with
74 this chapter and Title 77, Chapter 24, Disposal of Property Received by Peace Officer.

75 (4) The initial hold by a law enforcement agency is for a period of 90 days. ~~[If the~~
76 ~~article is not seized by the law enforcement agency, the]~~ A purchased or pawned article shall
77 remain in the custody of the pawn or secondhand business and is subject to the hold ~~[unless~~
78 ~~exigent circumstances require the purchased or pawned article to be seized by the law~~
79 ~~enforcement agency],~~ except as provided in Section 13-32a-109.5.

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

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

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

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

89 (7) When the purpose for the hold on or seizure of an article is terminated, the law

90 enforcement agency requiring the hold or seizure shall within 15 days after the termination:

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

93 ~~[(b) return the article subject to the seizure to the pawn or secondhand business; or]~~

94 ~~[(c) if the article is not returned to the pawn or secondhand business;]~~

95 (b) advise the pawn or secondhand business either in writing or electronically of the
96 specific alternative disposition of the article.

97 (8) If the law enforcement agency does not notify the pawn or secondhand business
98 that a hold on an item has expired, the pawn or secondhand business shall send a letter by
99 registered or certified United States mail to the law enforcement agency that ordered the hold
100 and inform the agency that the holding period has expired. The law enforcement agency shall
101 respond within 30 days by:

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

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

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

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

109 (b) delivered to the pawn or secondhand business by registered or certified United
110 States mail; or

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

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

116 Section 2. Section **13-32a-109.5** is amended to read:

117 **13-32a-109.5. Seizure of property.**

118 (1) As used in this section "necessary during the course of a criminal investigation"
119 means that actual physical possession of an article purchased or pawned is essential to a law
120 enforcement purpose, including:

- 121 (a) fingerprinting of an article;
 122 (b) chemical testing of an article;
 123 (c) use of an article as an exhibit at trial, as authorized by the prosecutor; or
 124 (d) if the article contains unique or sensitive personal identifying information.

125 ~~[(1)-(f)]~~ (2) If a law enforcement agency determines seizure of pawned or sold property
 126 is necessary during the course of a criminal investigation in addition to the holding provisions
 127 under Section 13-32a-109, the law enforcement agency shall:

- 128 (a) notify the pawnshop of the specific item to be seized;
 129 (b) issue to the pawnshop a seizure ticket in a form approved by the division and that:
 130 (i) provides the active case number related to the item to be seized;
 131 (ii) provides the date of the seizure request;
 132 (iii) describes the article to be seized and each reason the article is necessary during the
 133 course of a criminal investigation; and
 134 (iv) includes any information that facilitates the pawnbroker's ability to track the article
 135 when the prosecution agency takes over the case.

136 ~~[(2)]~~ (3) If the law enforcement agency seizing the pawned or sold property is not the
 137 local law enforcement agency, the seizing agency shall, in addition to compliance with
 138 Subsection ~~[(1)]~~ (2):

- 139 (a) notify the local law enforcement agency prior to any seizure; and
 140 (b) facilitate the seizure of the pawned property in cooperation with the local law
 141 enforcement agency to provide the pawnshop or secondhand business the ability to monitor the
 142 proceedings under Section 13-32a-109.8.

143 (4) If the purpose for seizure of an article under this section is terminated before final
 144 disposition of the criminal case and the property is no longer needed as evidence under Section
 145 77-24-2, the law enforcement agency requiring the seizure shall within 15 days:

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

149 Section 3. Section **13-32a-109.8** is amended to read:

150 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

151 (1) If the article pawned or sold under Section 13-32a-109 is subject to an investigation

152 and a criminal prosecution results, the prosecuting agency shall, prior to disposition of the case:

153 (a) request restitution to the pawn or secondhand business for the crimes perpetrated
154 against the pawn or secondhand business as a victim of theft by deception; and

155 (b) request restitution for the original victim.

156 (2) If the original victim of the theft of the property files a police report and the
157 property is subsequently located at a pawn or secondhand business, the victim shall fully
158 cooperate with the prosecution of the crimes perpetrated against the pawn or secondhand
159 business as a victim of theft by deception, in order to qualify for restitution regarding the
160 property.

161 (3) If the original victim does not pursue criminal charges or does not cooperate in the
162 prosecution of the property theft crimes charged against the defendant and the theft by
163 deception charges committed against the pawn or secondhand business, then the original victim
164 shall pay to the pawn or secondhand business the amount of money financed or paid by the
165 pawn or secondhand business to the defendant in order to obtain the property.

166 (4) (a) The victim's cooperation in the prosecution of the property crimes and in the
167 prosecution of the theft by deception offense committed against the pawn or secondhand
168 business suspends the requirements of Subsections (2) and (3).

169 (b) If the victim cooperates in the prosecution under Subsection (4)(a) and the
170 defendants are convicted, the prosecuting agency shall direct the pawn or secondhand business
171 to turn over the property to the victim.

172 (c) Upon receipt of notice from the prosecuting agency that the property [~~must~~] shall be
173 turned over to the victim, the pawn or secondhand business shall return the property to the
174 victim as soon as reasonably possible.

175 (5) If the identity of a person as a victim is based upon that victim's having conducted a
176 transaction involving the stolen property at a pawn or secondhand business and regarding
177 which the victim claims no knowledge of the status of the property as stolen, disposition of the
178 property shall be conducted in accordance with Subsections (1) through (4), if the criminal
179 prosecution regarding the stolen property has been concluded.

180 (6) If the criminal prosecution regarding the stolen property under Subsection (5) has
181 not been concluded, disposition of the property shall be as follows:

182 (a) if the identity of the perpetrator of the theft remains unknown, if more than 180

183 days have passed since any hold on the article has expired, and no court order extends the hold,
184 the victim may request release of the property under Section 77-24-2; or

185 (b) if the identity of the perpetrator of the theft is known, if a warrant is outstanding for
186 the arrest of the perpetrator of the theft, and the article is no longer needed as evidence under
187 Section 77-24-2, the victim may request release of the property under Section 77-24-2.

188 [~~5~~] (7) A pawn or secondhand business shall fully cooperate in the prosecution of the
189 property crimes committed against the original victim and the property crime of theft by
190 deception committed against the pawn or secondhand business in order to participate in any
191 court-ordered restitution.

192 [~~6~~] (8) At all times during the course of a criminal investigation and subsequent
193 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or
194 secondhand business subject to the hold unless a pawned or sold article has been seized by the
195 law enforcement agency pursuant to Section 13-32a-109.5.

196 Section 4. Section **77-24-2** is amended to read:

197 **77-24-2. Property not needed as evidence -- Return procedure.**

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

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

203 (b) When the prosecuting attorney is informed or otherwise becomes aware that the
204 property is not needed as evidence, the prosecutor shall authorize release of the property to the
205 owner.

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

209 (d) If the property was seized under Section 13-32a-109.5 and is no longer needed as
210 evidence in a criminal prosecution, disposition of the property shall be in accordance with
211 Section 13-32a-109.8.

212 [~~d~~] (e) If the property is a weapon, the peace officer shall dispose of it in accordance
213 with Section 76-10-525.

214 [~~(e)~~] (f) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the
215 evidence custodian, the custodian shall release the property to the owner.

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

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

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

Legislative Review Note
as of 2-25-11 3:27 PM

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