

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

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to pawn and secondhand businesses.

Highlighted Provisions:

This bill:

- defines terms;
- addresses what is required if the electronic serial number of a wireless communication device is not available;
- imposes limitations if the electronic serial number of a wireless communication device is not available;
- requires certain photographs with the purchase of a wireless communication device;
- allows for updating the central database if the electronic serial number of a wireless communication device is available by a certain time after the date of purchase;
- addresses the holding period for wireless communication devices; and
- makes technical changes.

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 2019, Chapter 309

13-32a-104, as last amended by Laws of Utah 2019, Chapter 309

13-32a-106, as last amended by Laws of Utah 2019, Chapter 309

13-32a-109, as last amended by Laws of Utah 2019, Chapter 309

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

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

13-32a-102. Definitions.

As used in this chapter:

(1) "Account" means the Pawnbroker and Secondhand Merchandise Operations
Restricted Account created in Section **13-32a-113**.

(2) "Antique item" means an item:
(a) that is generally older than 25 years;
(b) whose value is based on age, rarity, condition, craftsmanship, or collectability;
(c) that is furniture or other decorative objects produced in a previous time period, as
distinguished from new items of a similar nature; and

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

(3) "Antique shop" means a business operating at an established location that deals
primarily in the purchase, exchange, or sale of antique items.

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

(5) "Central database" or "database" means the electronic database created and
operated under Section **13-32a-105**.

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

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

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

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

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

(ii) worth more than its metal content value.

(9) "Coin dealer" means a person whose sole business activity is the selling and purchasing of numismatic items and precious metals.

(10) "Collectible paper money" means paper currency that is no longer in circulation and is sold and purchased for the paper currency's collectible value.

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

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

or

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

(b) "Commercial grade precious metals" or "precious metals" does not include jewelry.

(12) "Consignment shop" means a business, operating at an established location:

(a) that deals primarily in the offering for sale property owned by a third party; and

(b) where the owner of the property only receives consideration upon the sale of the property by the business.

(13) "Division" means the Division of Consumer Protection created in Chapter 1, Department of Commerce.

(14) "Exonomia" means a privately issued token for trade that is sold and purchased for the token's collectible value.

(15) "Gift card" means a record that:

(a) is usable at:

(i) a single merchant; or

(ii) a specified group of merchants;

(b) is prefunded before the record is used; and

(c) can be used for the purchase of goods or services.

(16) "Identification" means any of the following non-expired forms of identification issued by a state government, the United States government, or a federally recognized Indian tribe, if the identification includes a unique number, photograph of the bearer, and date of birth:

(a) a United States Passport or United States Passport Card;

- (b) a state-issued driver license;
- (c) a state-issued identification card;
- (d) a state-issued concealed carry permit;
- (e) a United States military identification;
- (f) a United States resident alien card;
- (g) an identification of a federally recognized Indian tribe; or
- (h) notwithstanding Section 53-3-207, a Utah driving privilege card.

(17) "Indicia of being new" means property that:

- (a) is represented by the individual pawning or selling the property as new;
- (b) is unopened in the original packaging; or
- (c) possesses other distinguishing characteristics that indicate the property is new.

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

(19) "Numismatic item" means a coin, collectible paper money, or exnumia.

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

- (a) an authorized representative designated in writing by the original victim; and
- (b) an insurer who has indemnified the original victim for the loss of the described property.

(21) "Pawn or secondhand business" means a business operated by a pawnbroker or secondhand merchandise dealer, or the owner or operator of the business.

(22) "Pawn transaction" means:

(a) an extension of credit in which an individual delivers property to a pawnbroker for an advance of money and retains the right to redeem the property for the redemption price within a fixed period of time;

(b) a loan of money on one or more deposits of personal property;

(c) the purchase, exchange, or possession of personal property on condition of selling the same property back again to the pledgor or depositor; or

(d) a loan or advance of money on personal property by the pawnbroker taking chattel mortgage security on the personal property, taking or receiving the personal property into the

121 pawnbroker's possession, and selling the unredeemed pledges.

122 (23) "Pawnbroker" means a person whose business:

123 (a) engages in a pawn transaction; or

124 (b) holds itself out as being in the business of a pawnbroker or pawnshop, regardless of
125 whether the person or business enters into pawn transactions or secondhand merchandise
126 transactions.

127 (24) "Pawnshop" means the physical location or premises where a pawnbroker
128 conducts business.

129 (25) "Pledgor" means an individual who conducts a pawn transaction with a pawnshop.

130 (26) "Property" means an article of tangible personal property, numismatic item,
131 precious metal, gift card, transaction card, or other physical or digital card or certificate
132 evidencing store credit.

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

135 (28) "Scrap jewelry" means any item purchased solely:

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

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

138 (29) (a) "Secondhand merchandise dealer" means a person whose business:

139 (i) engages in a secondhand merchandise transaction; and

140 (ii) does not engage in a pawn transaction.

141 (b) "Secondhand merchandise dealer" includes a coin dealer.

142 (c) "Secondhand merchandise dealer" does not include:

143 (i) an antique shop when dealing in antique items;

144 (ii) a person who operates an auction house, flea market, or vehicle, vessel, and
145 outboard motor dealers as defined in Section [41-1a-102](#);

146 (iii) the sale of secondhand goods at events commonly known as "garage sales," "yard
147 sales," "estate sales," "storage unit sales," or "storage unit auctions";

148 (iv) the sale or receipt of secondhand books, magazines, post cards, or nonelectronic:

149 (A) card games;

150 (B) table-top games; or

151 (C) magic tricks;

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

(vi) the sale or receipt of secondhand clothing, shoes, furniture, or appliances;

(vii) any person offering the person's own personal property for sale, purchase, consignment, or trade via the Internet;

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

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

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

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

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

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

(xii) the purchase of items in bulk that are:

(A) sold at wholesale in bulk packaging;

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

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

(xiii) the owner or operator of a children's product resale business; or

(xiv) a consignment shop when dealing in consigned property.

(30) "Secondhand merchandise transaction" means the purchase or exchange of used or secondhand property.

(31) "Ticket" means a document upon which information is entered when a pawn transaction or secondhand merchandise transaction is made.

(32) "Transaction card" means a card, code, or other means of access to a value with the retail business issued to a person that allows the person to obtain, purchase, or receive any of the following:

(a) goods;

- (b) services;
- (c) money; or
- (d) anything else of value.

(33) "Wireless communication device" means:

- (a) a cellular telephone; or
- (b) a portable electronic device that is capable of receiving and transmitting data,
- including text messages and email.

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

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

(1) A pawn or secondhand business shall keep a ticket for property a person pawns or sells to the pawn or secondhand business. A pawn or secondhand business shall document on the ticket the following information regarding the property:

- (a) the date and time of the transaction;
- (b) whether the transaction is a pawn or purchase;
- (c) the ticket number;
- (d) the date by which the property must be redeemed, if the property is pawned;
- (e) the following information regarding the individual who pawns or sells the property:
 - (i) the individual's full name and date of birth as they appear on the individual's identification and the individual's residence address and telephone number;
 - (ii) the unique number and type of identification presented to the pawn or secondhand business;
 - (iii) the individual's signature; and
 - (iv) subject to Subsection (6), a legible fingerprint of the individual's right index finger, or if the right index finger cannot be fingerprinted, a legible fingerprint of the individual with a notation identifying the fingerprint and the reason why the index finger's print was unavailable;
- (f) the amount loaned on, paid for, or value for trade-in of each article of property;
- (g) the full name of the individual conducting the pawn transaction or secondhand merchandise transaction on behalf of the pawn or secondhand business or the initials or a unique identifying number of the individual, if the pawn or secondhand business maintains a record of the initials or unique identifying number of the individual; and

(h) an accurate description of each article of property, with available identifying marks, including:

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

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

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

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

(v) any other unique identifying feature;

(vi) gold content, if indicated; ~~or~~

(vii) if multiple articles of property of a similar nature are delivered together in one transaction and the articles of property do not bear serial or model numbers and do not include precious metals or gemstones, such as musical or video recordings, books, or hand tools, the description of the articles is adequate if it includes the quantity of the articles and a description of the type of articles delivered~~[-];~~ or

(viii) if the electronic serial number of a wireless communication device is not available at the time of purchase, a unique identifier to the wireless communication device:

(A) assigned by the pawn or secondhand business that directly associates the wireless communication device to the transaction when the wireless communication device was purchased; and

(B) affixed to the wireless communication device by the seller at the time of purchase by the pawn or secondhand business.

(2) (a) A pawn or secondhand business may not accept property if, upon inspection, it is apparent that:

(i) a serial number or another form of indicia of ownership has been removed, altered, defaced, or obliterated;

(ii) a wireless communication device's electronic serial number is not available at the time of purchase, unless the purchase price paid does not exceed \$25;

~~[(ii)]~~ (iii) the property is not a numismatic item and has indicia of being new, but is not accompanied by a written receipt or other satisfactory proof of ownership other than the seller's own statement; or

~~[(iii)]~~ (iv) except as provided in Subsection [13-32a-103.1\(3\)](#), the property is a gift card,

transaction card, or other physical or digital card or certificate evidencing store credit.

(b) A pawn or secondhand business is not subject to Subsection (2)(a)(~~ii~~)(iii) if the pawn or secondhand business is the original seller of the property and is accepting a return of the property as provided by the pawn or secondhand business' established return policy.

(c) Property is presumed to have had indicia of being new at the time of a transaction if the property is subsequently advertised by the pawn or secondhand business as being new.

(d) The division may annually review the dollar amount provided in Subsection (2)(a)(ii) and adjust the amount by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in accordance with the division's authority under Subsection 13-32a-102.5(1).

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

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

(c) An individual may not exceed 10 wireless communication device sales to a pawn or secondhand business over a one-year period if the electronic serial number for those wireless communication devices is not available at the time of purchase.

(d) Notwithstanding Subsection (1)(h)(vii), a wireless communication device that does not have an available electronic serial number at the time of purchase by a pawn or secondhand business may only be purchased by the pawn or secondhand business in a single item transaction.

(4) A coin dealer is subject to Section 13-32a-104.5 and not subject to this section.

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

(6) (a) On and after January 1, 2020:

(i) a pawn or secondhand business shall obtain an electronic legible fingerprint of the individual's right index finger that can be submitted to the central database at the same time the

other information is submitted under this section, or if the right index finger cannot be fingerprinted, an electronic legible fingerprint of the individual with a notation on the ticket identifying the fingerprint and the reason why a right index fingerprint is unavailable; and

(ii) the electronic fingerprint is not required on the ticket.

(b) On and after January 1, 2020, a pawn or secondhand business shall submit an electronic legible fingerprint obtained under Subsection (6)(a) to the central database.

(7) (a) As used in this Subsection (7), "jewelry" means:

(i) any jewelry purchased by the pawn or secondhand business, including scrap jewelry and watches; or

(ii) any jewelry that the pawn or secondhand business is allowed to sell under Subsection 13-32a-109(1), including scrap jewelry and watches.

(b) On and after January 1, 2020, a pawn or secondhand business shall obtain:

(i) a color digital photograph clearly and accurately depicting:

(A) each item of jewelry; and

(B) if an item of jewelry has one or more engravings, an additional color digital photograph specifically depicting any engraving; and

(ii) a color digital photograph of an item that bears an identifying mark, including:

(A) a serial number, engraving, owner label, or similar identifying mark; and

(B) an additional photograph that clearly depicts the identifying mark described in Subsection (7)(b)(ii)(A) unless the article is a wireless communications device.

(c) A pawn or secondhand business that purchases a wireless communication device shall obtain:

(i) a color digital photograph of the individual selling the wireless communication device;

(ii) a color digital photograph of the wireless communication device; and

(iii) a color digital photograph of the seller label if required under Subsection (1)(h)(viii).

Section 3. Section 13-32a-106 is amended to read:

13-32a-106. Transaction information provided to the central database -- Protected information.

(1) (a) A pawn or secondhand business shall transmit electronically in a compatible

format information required to be recorded under Sections 13-32a-103, 13-32a-104, and 13-32a-104.5 that is capable of being transmitted electronically to the central database within 24 hours after entering into the transaction.

(b) The division may specify by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the information capable of being transmitted electronically under Subsection (1)(a).

(c) If a wireless communication device's electronic serial number is not available at the time of purchase by a pawn or secondhand business, the transaction information to be provided to the central database shall be updated if the electronic serial number is available within 15 calendar days after the date of purchase.

(2) A pawn or secondhand business shall maintain tickets generated by the pawn or secondhand business and shall maintain the tickets in a manner so that the tickets are available to local law enforcement agencies as required by this chapter and as requested by any law enforcement agency as part of an investigation or reasonable random inspection conducted pursuant to this chapter.

(3) (a) If a pawn or secondhand business experiences a computer or electronic malfunction that affects its ability to report transactions as required in Subsection (1), the pawn or secondhand business shall immediately notify the division and the local law enforcement agency of the malfunction.

(b) The pawn or secondhand business shall solve the malfunction within three business days or notify the division and the local law enforcement agency under Subsection (4).

(4) If the computer or electronic malfunction under Subsection (3) cannot be solved within three business days, the pawn or secondhand business shall notify the division and the local law enforcement agency of the reasons for the delay and provide documentation from a reputable computer maintenance company of the reasons why the computer or electronic malfunction cannot be solved within three business days.

(5) A computer or electronic malfunction does not suspend the pawn or secondhand business' obligation to comply with all other provisions of this chapter.

(6) During the malfunction under Subsections (3) and (4), the pawn or secondhand business shall:

(a) arrange with the local law enforcement agency a mutually acceptable alternative

method by which the pawn or secondhand business provides the required information to the local law enforcement agency; and

(b) a pawn or secondhand business shall maintain the tickets and other related information required under this chapter in a written form.

(7) A pawn or secondhand business that violates the electronic transaction reporting requirement of this section is subject to an administrative fine of \$50 per day if:

(a) the pawn or secondhand business is unable to submit the information electronically due to a computer or electronic malfunction;

(b) the three business day period under Subsection (3) has expired; and

(c) the pawn or secondhand business has not provided documentation regarding its inability to solve the malfunction as required under Subsection (4).

(8) A pawn or secondhand business is not responsible for a delay in transmission of information that results from a malfunction in the central database.

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

Section 4. Section 13-32a-109 is amended to read:

13-32a-109. Holding period for property -- Return of property -- Penalty.

(1) (a) A pawnbroker may sell property pawned to the pawnbroker if:

(i) 15 calendar days have passed after the day on which the pawnbroker submits the information and any required photograph to the central database;

(ii) the contract period between the pawnbroker and the pledgor expires; and

(iii) the pawnbroker has complied with Sections 13-32a-103, 13-32a-104, and 13-32a-106.

(b) If property, including scrap jewelry, is purchased by a pawn or secondhand business, the pawn or secondhand business may sell the property if the pawn or secondhand business has held the property for 15 calendar days after the day on which the pawn or secondhand business submits the information to the central database, and complied with Sections 13-32a-103, 13-32a-104, and 13-32a-106, except that the pawn or secondhand business is not required to hold precious metals or numismatic items under this Subsection (1)(b).

(c) Notwithstanding the other provisions of this Subsection (1), if the wireless

communication device's electronic serial number is updated to the central database pursuant to Subsection 13-32a-106(1)(c), the pawn or secondhand business may sell the wireless communication device only if the pawn or secondhand business holds the wireless communication device for at least 30 calendar days after the date of purchase.

(d) Notwithstanding the other provisions of this Subsection (1), if the wireless communication device's electronic serial number is not available and cannot be updated to the central database pursuant to Subsection 13-32a-106(1)(c), the pawn or secondhand business may sell the wireless communication device only if the pawn or secondhand business holds the wireless communication device for at least 60 calendar days after the date of purchase.

~~[(e)]~~ (e) (i) This Subsection (1) does not preclude a law enforcement agency from requiring a pawn or secondhand business to hold property if necessary in the course of an investigation.

(ii) If the property is pawned, the law enforcement agency may require the property be held beyond the terms of the contract between the pledgor and the pawnbroker.

(iii) If the property is sold to the pawn or secondhand business, the law enforcement agency may require the property be held if the pawn or secondhand business has not sold the article.

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

(2) If a law enforcement agency requires the pawn or secondhand business to hold property as part of an investigation, the law enforcement agency shall provide to the pawn or secondhand business a hold form issued by the law enforcement agency, that:

(a) states the active case number;

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

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

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

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

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

(b) If there is an extension of a hold under Subsection (5)(a), the requesting law enforcement agency shall notify the pawn or secondhand business that is subject to the hold ~~[prior to]~~ before the expiration of the initial 90 days.

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

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

(7) If an original victim who has complied with Section 13-32a-115 has not been identified and the hold or seizure of the property is terminated, the law enforcement agency requiring the hold or seizure shall within 15 business days after the termination:

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

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

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

(8) (a) If the original victim who has complied with Section 13-32a-115 has been identified and the hold or seizure of property is terminated, the law enforcement agency requiring the hold or seizure shall:

(i) document the original victim who has positively identified the property; and

(ii) provide the documented information concerning the original victim to the prosecuting agency to determine whether continued possession of the property is necessary for purposes of prosecution, as provided in Section 24-3-103.

(b) If the prosecuting agency determines that continued possession of the property is not necessary for purposes of prosecution, as provided in Section 24-3-103, the prosecuting

agency shall provide a written or electronic notification to the law enforcement agency that authorizes the return of the property to an original victim who has complied with Section 13-32a-115.

(c) (i) A law enforcement agency shall promptly provide notice to the pawn or secondhand business of the authorized return of the property under this Subsection (8).

(ii) The notice shall identify the original victim, advise the pawn or secondhand business that the original victim has identified the property, and direct the pawn or secondhand business to release the property to the original victim at no cost to the original victim.

(iii) If the property was seized, the notice shall advise that the property will be returned to the original victim within 15 days after the day on which the pawn or secondhand business receives the notice, except as provided under Subsection (8)(d).

(d) The pawn or secondhand business shall release property under Subsection (8)(c) unless within 15 days of receiving the notice the pawn or secondhand business complies with Section 13-32a-116.5.

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

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

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

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

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

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

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

(11) If the law enforcement agency does not respond within 30 days under Subsection (9), the pawn or secondhand business may manage the property as if acquired in the ordinary

462 course of business.

463 (12) A violation of this section is a class B misdemeanor and is also subject to civil

464 penalties under Section [13-32a-110](#).