

VICTIMS' RIGHTS AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Profits From Crime Memorabilia Act to include any profits received from criminal activity.

Highlighted Provisions:

This bill:

- ▶ changes the Profits From Crime Memorabilia Act to allow for the forfeiture to the state of any profit derived from criminal activity;
- ▶ requires the attorney general to bring a motion in the district court to request that any funds gained from criminal activity be paid to the Department of Corrections;
- ▶ provides that the Department of Corrections shall pay victim restitution out of the profit, if still owing; and
- ▶ if no restitution is still owed or after all restitution is paid, to pay the remainder to the Crime Victim Reparations Fund.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-38-301, as enacted by Laws of Utah 2008, Chapter 3



28 77-38-302, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
29 amended by Laws of Utah 2008, Chapter 3

30 77-38-303, as renumbered and amended by Laws of Utah 2008, Chapter 3

31 REPEALS:

32 77-18-8.3, as enacted by Laws of Utah 1996, Chapter 210

33 77-18-8.5, as enacted by Laws of Utah 1996, Chapter 210



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

36 Section 1. Section 77-38-301 is amended to read:

37 **Part 3. Profits from Criminal Activity Act**

38 **77-38-301. Title.**

39 This part is known as the "Profits from [~~Crime Memorabilia~~] Criminal Activity Act."

40 Section 2. Section 77-38-302 is amended to read:

41 **77-38-302. Definitions.**

42 As used in this part:

43 (1) "Conviction" means an adjudication of a first degree or capital felony by a federal
44 or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a
45 finding of not guilty due to insanity, or not guilty but mentally ill regardless of whether the
46 sentence was imposed or suspended.

47 (2) "Department" means the Department of Corrections.

48 [~~(2)~~] (3) "Fund" means the Crime Victim Reparations Fund created in Section
49 51-9-404.

50 [~~(3)~~] (4) "Memorabilia" means any tangible property of a person [~~convicted of a first~~
51 ~~degree or capital felony~~], the value of which is enhanced by the notoriety gained from the
52 [~~conviction~~] criminal activity for which the person was convicted.

53 [~~(4)~~] (5) "Profit" means any income or benefit:

54 (a) over and above the fair market value of [the] tangible property that is received upon
55 the sale or transfer of memorabilia[-]; or

56 (b) any proceeds traceable to a conviction or the criminal activity which led to the
57 conviction including monies, negotiable instruments, securities, or other property gained
58 because of the conviction.

59 Section 3. Section 77-38-303 is amended to read:

60 **77-38-303. Profit from criminal activity -- Deposit in Crime Victim Reparation**
61 **Fund -- Penalty.**

62 (1) Any person who receives a profit from the sale or transfer of memorabilia shall
63 remit to the fund:

64 (a) a complete, itemized accounting of the transaction, including:

65 (i) a description of each item sold;

66 (ii) the amount received for each item;

67 (iii) the estimated fair market value of each item; and

68 (iv) the name and address of the purchaser of each item; and

69 (b) a check or money order for the amount of the profit, which shall be the difference
70 between the amount received for the item and the estimated fair market value of the item.

71 (2) Any person who willfully violates Subsection (1) may be assessed a civil penalty of
72 up to \$1,000 per item sold or transferred or three times the amount of the unremitted profit,
73 whichever is greater.

74 (3) (a) Upon the motion of the attorney general the court shall, if the court determines
75 that a defendant has profited or will profit from a conviction or the criminal activity which led
76 to the conviction through means other than the sale of memorabilia, order the defendant to
77 forfeit to the Department of Corrections any or all profit received or promised from any source.

78 (b) An order under this Subsection (3) shall require that any person who has contracted
79 with or promised to pay the defendant remit any proceeds directly to the Department of
80 Corrections.

81 (4) Upon receipt of funds under Subsection (3), the department shall distribute the
82 funds:

83 (a) first, to the victim of the crime from which the profits are derived if restitution is
84 still owed; or

85 (b) if no restitution is outstanding, to the fund.

86 Section 4. **Repealer.**

87 This bill repeals:

88 Section 77-18-8.3, **Special condition of sentence during incarceration -- Penalty.**

89 Section 77-18-8.5, **Special condition of probation -- Penalty.**

Legislative Review Note
as of 1-29-10 2:16 PM

Office of Legislative Research and General Counsel

H.B. 293 - Victims' Rights Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
