

Representative R. Curt Webb proposes the following substitute bill:

~~H→ [-VICTIMS' RIGHTS]~~

NOTORIOUS CRIMINAL ACTIVITY AMENDMENTS ←H

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: Lyle W. Hillyard

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 the state to receive any profit derived from criminal activity;

~~H→~~ ► defines "convicted person"; ←H

► requires any entity or person who contracts with a ~~H→~~ [defendant] convicted person ←H to remit to the Crime

Victims Reparations Fund any funds owed to the ~~H→~~ [defendant] convicted person ←H by virtue of a contract

with the ~~H→~~ [defendant] convicted person ←H ; and

► provides that the Utah Office for Victims of Crime shall pay:

- any victim restitution still owed out of the profit; and
- if no restitution is still owed, or after all restitution is paid, the remainder into the Crime Victim Reparations Fund.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **77-38-301**, as enacted by Laws of Utah 2008, Chapter 329 **77-38-302**, as last amended by Laws of Utah 2011, Chapter 36630 **77-38-303**, as renumbered and amended by Laws of Utah 2008, Chapter 3

31 REPEALS:

32 **77-18-8.3**, as last amended by Laws of Utah 2011, Chapter 36633 **77-18-8.5**, as last amended by Laws of Utah 2011, Chapter 366

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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 Notorious Criminal Activity Act**38 **77-38-301. Title.**39 This part is known as the "Profits from [~~Crime Memorabilia~~] Notorious Criminal
40 Activity Act."41 Section 2. Section **77-38-302** is amended to read:42 **77-38-302. Definitions.**

43 As used in this part:

44 (1) ~~H~~→ **"Convicted person" means a person who has been convicted of a crime.**44a (2) ~~H~~← **"Conviction" means an adjudication by a federal or state court resulting from a trial**
45 **or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity,**
46 **or not guilty but having a mental illness regardless of whether the sentence was imposed or**
47 **suspended.**48 ~~H~~→ [(2)] (3) ~~H~~← **"Fund" means the Crime Victim Reparations Fund created in**
48a **Section 51-9-404.**49 ~~H~~→ [(3)] (4) ~~H~~← **"Memorabilia" means any tangible property of a ~~H~~→ [person] defendant or a**
49a **representative or assignee of a defendant ~~H~~← [convicted of a first degree**
50 **or capital felony], the value of which is enhanced by the notoriety gained from the [conviction]**
51 **criminal activity for which the person was convicted.**52 ~~H~~→ [(4)] (5) ~~H~~← **"Notoriety of crimes contract" means a contract or other agreement with a**
53 **~~H~~→ [defendant] convicted person ~~H~~← , or a representative or assignee of a ~~H~~→ [defendant]**
53a **convicted person ~~H~~← , with respect to:**54 (a) the reenactment of a crime in any manner including a movie, book, magazine
55 article, internet website, recording, phonograph record, radio or television presentation, or live
56 entertainment of any kind;

57 (b) the expression of the ~~H~~→ [defendant's] convicted person's ~~H~~← thoughts, feelings,
 57a opinions, or emotions
 58 regarding a crime involving or causing personal injury, death, or property loss as a direct result
 59 of the crime; or

60 (c) the payment or exchange of any money or other consideration or the proceeds or
 61 profits that directly or indirectly result from the notoriety of the crime.

62 ~~H~~→ [(5)] (6) ~~H~~← "Office" means the Utah Office for Victims of Crime.

63 [(4)] ~~H~~→ [(6)] (7) ~~H~~← "Profit" means any income or benefit;

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

66 (b) any money, negotiable instruments, securities, or other consideration received or
 67 contracted for gain which is traceable to a notoriety of crimes contract.

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

69 **77-38-303. Profit from sale of memorabilia or notoriety of crimes contract --**

70 **Deposit in Crime Victim Reparations Fund -- Penalty.**

71 (1) Any ~~H~~→ [person] [defendant] convicted person or a representative or assignee of a
 71a1 [defendant] convicted person ~~H~~← who
 71a receives a profit from the sale or transfer of memorabilia shall
 72 remit to the fund:

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

74 (i) a description of each item sold;

75 (ii) the amount received for each item;

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

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

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

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

83 (3) (a) Any person or entity who enters into a notoriety of crime contract with a
 84 ~~H~~→ [defendant] convicted person ~~H~~← or with a representative or assignee of a ~~H~~→ [defendant]
 84a convicted person ~~H~~← shall pay to the fund any profit
 85 which by the terms of the contract would otherwise be owing to the ~~H~~→ [defendant] convicted
 85a person ~~H~~← or representative
 86 or assignee of the ~~H~~→ [defendant] convicted person ~~H~~← .

87 (b) A ~~H~~→ [defendant] convicted person ~~H~~← or a representative or assignee of a
 87a ~~H~~→ [defendant] convicted person ~~H~~← who has received any

88 profit from a notoriety of crime contract shall remit the profit to the fund. Any future profit
89 which, by the terms of the contract, would otherwise be owing to the ~~H~~→ [defendant] convicted
89a person ←~~H~~ or a
90 representative or assignee of a ~~H~~→ [defendant] convicted person ←~~H~~ shall be paid to the fund as
90a required under Subsection
91 (3)(a).

92 (4) Upon receipt of monies under Subsection (3), the office shall distribute the amounts
93 to the victim of the crime from which the profits are derived if any restitution remains
94 outstanding. If no restitution is outstanding, the monies shall be deposited into the fund.

95 (5) (a) Any person or entity who willfully violates Subsection (3) may be assessed a
96 civil penalty of up to \$1,000,000.00, or up to three times the total value of the original notoriety
97 of crime contract, whichever is greater.

98 (b) Any civil penalty ordered under this Subsection shall be paid to the fund.

99 (6) The prosecuting agency or the attorney general may bring an action to enforce the
100 provisions of this chapter in the court of conviction.

101 (7) A court shall enter an order to remit funds as provided in this chapter if it finds by a
102 preponderance of evidence any violation of Subsection (1) or (3).

103 **Section 4. Repealer.**

104 This bill repeals:

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

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