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**VICTIMS' RIGHTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: \_\_\_\_\_

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**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 prosecutor who obtained the conviction or 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; and
- ▶ provides that the Department of Corrections 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

**Utah Code Sections Affected:**

AMENDS:



28 77-38-301, as enacted by Laws of Utah 2008, Chapter 3  
 29 77-38-302, as last amended by Laws of Utah 2011, Chapter 366  
 30 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 366  
 33 77-18-8.5, as last amended by Laws of Utah 2011, Chapter 366



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 having a mental illness regardless of  
 46 whether the 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 sale of memorabilia -- Deposit in Crime Victim**

61 **Reparation 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 prosecutor who obtained the conviction or the attorney  
75 general the court shall, if the court determines that a defendant has profited or will profit from a  
76 conviction or the criminal activity which led to the conviction through means other than the  
77 sale of memorabilia, order the defendant to forfeit to the department any or all profit received  
78 or promised from any source.

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

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.**

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**Legislative Review Note**  
**as of 11-2-11 4:35 PM**

**Office of Legislative Research and General Counsel**