

HB0052S01 compared with HB0052

~~{deleted text}~~ shows text that was in HB0052 but was deleted in HB0052S01.

inserted text shows text that was not in HB0052 but was inserted into HB0052S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative R. Curt Webb proposes the following substitute bill:

VICTIMS' RIGHTS

2012 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}~~to receive 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}~~any entity or person who contracts with a defendant to remit to the Crime Victims Reparations Fund any funds owed to the defendant by virtue of a contract with the defendant; and

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- ▶ provides that the ~~{Department}~~ Utah Office for Victims of ~~{Corrections}~~ 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

Utah Code Sections Affected:

AMENDS:

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

77-38-302, as last amended by Laws of Utah 2011, Chapter 366

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

REPEALS:

77-18-8.3, as last amended by Laws of Utah 2011, Chapter 366

77-18-8.5, as last amended by Laws of Utah 2011, Chapter 366

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

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

Part 3. Profits from Notorious Criminal Activity Act

77-38-301. Title.

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

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

77-38-302. Definitions.

As used in this part:

(1) "Conviction" means an adjudication ~~{of a first degree or capital felony}~~ by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but having a mental illness regardless of whether the sentence was imposed or suspended.

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~~{~~ (2) "Department" means the Department of Corrections.

~~}~~ ~~{}~~(2)~~{}~~(3) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

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

(4) "Notoriety of crimes contract" means a contract or other agreement with a defendant, or a representative or assignee of a defendant, with respect to:

(a) the reenactment of a crime in any manner including a movie, book, magazine article, internet website, recording, phonograph record, radio or television presentation, or live entertainment of any kind;

(b) the expression of the defendant's thoughts, feelings, opinions, or emotions regarding a crime involving or causing personal injury, death, or property loss as a direct result of the crime; or

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

(5) "Office" means the Utah Office for Victims of Crime.

~~{}~~(4) ~~{}~~(5)~~{}~~(6) "Profit" means any income or benefit:

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

(b) any ~~{proceeds traceable to a conviction or the criminal activity which led to the conviction including monies}~~money, negotiable instruments, securities, or other ~~{property gained because of the conviction}~~consideration received or contracted for gain which is traceable to a notoriety of crimes contract.

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

77-38-303. Profit from sale of memorabilia or notoriety of crimes contract -- Deposit in Crime Victim ~~{Reparation}~~Reparations Fund -- Penalty.

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

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

(i) a description of each item sold;

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- (ii) the amount received for each item;
- (iii) the estimated fair market value of each item; and
- (iv) the name and address of the purchaser of each item; and

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

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

~~(3) (a) Upon the motion of the prosecutor who obtained the conviction or the attorney general the court shall, if the court determines that a defendant has profited or will profit from a conviction or the criminal activity which led to the conviction through means other than the sale of memorabilia, order the defendant to forfeit to the department any or all profit received or promised from any source.~~

~~_____ (b) An order under this Subsection (3) shall require that any person who has contracted with or promised to pay the defendant remit any proceeds directly to the department} Any person or entity who enters into a notoriety of crime contract with a defendant or with a representative or assignee of a defendant shall pay to the fund any profit which by the terms of the contract would otherwise be owing to the defendant or representative or assignee of the defendant.~~

~~(b) A defendant or a representative or assignee of a defendant who has received any profit from a notoriety of crime contract shall remit the profit to the fund. Any future profit which, by the terms of the contract, would otherwise be owing to the defendant or a representative or assignee of a defendant shall be paid to the fund as required under Subsection (3)(a).~~

~~(4) Upon receipt of {funds} monies under Subsection (3), the {department} office shall distribute the {funds}:~~

~~_____ (a) first, } amounts to the victim of the crime from which the profits are derived if any restitution {is still owed; or~~

~~_____ (b) } remains outstanding. {if} If no restitution is outstanding, {to} the monies shall be deposited into the fund.~~

~~(5) (a) Any person or entity who willfully violates Subsection (3) may be assessed a~~

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civil penalty of up to \$1,000,000.00, or up to three times the total value of the original notoriety of crime contract, whichever is greater.

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

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

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

Section 4. **Repealer.**

This bill repeals:

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

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

†

~~Legislative Review Note~~

~~as of 11-2-11 4:35 PM~~

~~Office of Legislative Research and General Counsel}~~