

**Senator Lyle W. Hillyard** proposes the following substitute bill:

**NOTORIOUS CRIMINAL ACTIVITY AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: Lyle W. Hillyard

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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 the state to receive any profit derived from criminal activity;
- ▶ defines "convicted person";
- ▶ requires any entity or person who contracts with a convicted person to remit to the Crime Victims Reparations Fund any funds owed to the convicted person by virtue of a contract with the convicted person; 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:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **77-38-301**, as enacted by Laws of Utah 2008, Chapter 3

30 **77-38-302**, as last amended by Laws of Utah 2011, Chapter 366

31 **77-38-303**, as renumbered and amended by Laws of Utah 2008, Chapter 3

32 REPEALS:

33 **77-18-8.3**, as last amended by Laws of Utah 2011, Chapter 366

34 **77-18-8.5**, as last amended by Laws of Utah 2011, Chapter 366



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

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

38 **Part 3. Profits from Notorious Criminal Activity Act**

39 **77-38-301. Title.**

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

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

43 **77-38-302. Definitions.**

44 As used in this part:

45 (1) "Convicted person" means a person who has been convicted of a crime.

46 ~~(1)~~ (2) "Conviction" means an adjudication by a federal or state court resulting from a  
47 trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to  
48 insanity, or not guilty but having a mental illness regardless of whether the sentence was  
49 imposed or suspended.

50 ~~(2)~~ (3) "Fund" means the Crime Victim Reparations Fund created in Section  
51 51-9-404.

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

56 (5) "Notoriety of crimes contract" means a contract or other agreement with a

57 convicted person, or a representative or assignee of a convicted person, with respect to:

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

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

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

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

67 ~~[(4)]~~ (7) "Profit" means any income or benefit;

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

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

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

73 **77-38-303. Profit from sale of memorabilia or notoriety of crimes contract --**  
 74 **Deposit in Crime Victim Reparations Fund -- Penalty.**

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

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

78 (i) a description of each item sold;

79 (ii) the amount received for each item;

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

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

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

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

87 (3) (a) Any person or entity who enters into a notoriety of crime contract with a

88 convicted person or with a representative or assignee of a convicted person shall pay to the  
89 fund any profit which by the terms of the contract would otherwise be owing to the convicted  
90 person or representative or assignee of the convicted person.

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

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

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

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

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

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

107 **Section 4. Repealer.**

108 This bill repeals:

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

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