

By Senator Fasano

11-303-05

1 A bill to be entitled

2 An act relating to state liens on the proceeds

3 of sale of certain literary accounts and the

4 profits of sale of certain memorabilia;

5 amending s. 944.512, F.S.; defining terms

6 concerning the sale of literary accounts and

7 memorabilia by and on behalf of a convicted

8 felon; providing for a lien in favor of the

9 state on the proceeds or profits of the sale of

10 literary accounts, materials, and memorabilia

11 payable to or accruing to a convicted felon, a

12 representative of the convicted felon, or a

13 profiteer of the felony; providing for the

14 distribution of the proceeds or profits of the

15 sale of literary accounts or memorabilia;

16 amending s. 960.291, F.S.; revising definitions

17 with respect to civil restitution liens to

18 conform to changes made by the act; providing

19 an effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Section 944.512, Florida Statutes, is

24 amended to read:

25 944.512 State lien on proceeds from literary or other

26 type of account of crime for which convicted and on profits

27 from the sale of memorabilia.--

28 (1) As used in this section, the term:

29 (a) "Conviction" means a finding of guilt or the

30 acceptance of a plea of guilty or nolo contendere, regardless

31 of whether adjudication was withheld.

1 **(b) "Materials" means a book, magazine or newspaper**
2 **article, movie, film, videotape, sound recording, story,**
3 **interview or appearance on a television or radio station, or a**
4 **live presentation of any kind.**

5 **(c) "Proceeds of sale" means all fees, royalties, real**
6 **or personal property, or other consideration of any kind**
7 **received by or owing to a convicted felon or the**
8 **representative of a convicted felon for the preparation of or**
9 **for the purpose of sale of materials, for the sale of the**
10 **rights to materials, or the sale or distribution by the**
11 **convicted felon of materials, whether earned, accrued, or paid**
12 **before or after the conviction. The term includes any**
13 **interest, earnings, or accretions upon proceeds and any**
14 **property received in exchange for proceeds.**

15 **(d) "Profits from the sale of memorabilia" means all**
16 **income received from anything sold or transferred by a**
17 **convicted felon, a representative of a convicted felon, or a**
18 **profiteer of a felony, including any right or memorabilia, the**
19 **value of which thing or right is enhanced by the notoriety**
20 **gained from the commission of the felony of which the felon**
21 **was convicted. This income may have been accrued, earned, or**
22 **paid before or after the conviction. However, a voluntary**
23 **donation or contribution made to a defendant to assist in the**
24 **defense of criminal charges does not constitute profits from**
25 **the sale of memorabilia if the donation or contribution was**
26 **not given in exchange for something of value.**

27 **(e) "Profiteer of a felony" means any person who sells**
28 **or transfers for consideration any memorabilia or other**
29 **property or thing of a convicted felon, the value of which is**
30 **enhanced by the notoriety gained from the commission of the**
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1 felony of which the felon was convicted. This definition does
2 not apply to:

3 1. Any media entity reporting on a convicted felon or
4 reporting on the sale of materials, memorabilia, or other
5 property or things belonging to a felon;

6 2. The sale of materials, as the term is defined in
7 paragraph (b), if the seller is exercising his or her rights
8 under the First Amendment of the United States Constitution;
9 or

10 3. The sale or transfer of any other expressive work
11 protected by the First Amendment of the United States
12 Constitution, unless the sale or transfer is primarily for a
13 commercial or speculative purpose.

14 (e) "Representative of a convicted felon" means any
15 person or entity receiving proceeds of sale or profits from
16 the sale of memorabilia by designation of a convicted felon,
17 on behalf of a convicted felon, or in the stead of a convicted
18 felon, whether by the convicted felon's designation or by
19 operation of law.

20 (f) "Sale" includes the lease, licensure, or any other
21 transfer or alienation that takes place in this state or
22 elsewhere.

23 (g) "Story" means a depiction, portrayal, or
24 reenactment of a felony and does not mean a passing mention of
25 the felony, as in a footnote or bibliography.

26 (2)(1) A lien prior in dignity to all others exists
27 ~~shall exist~~ in favor of the state upon royalties, commissions,
28 proceeds of sale, or any other thing of value payable to or
29 accruing to a convicted felon or a representative of a
30 convicted felon ~~person on her or his behalf~~, including any
31 person to whom the proceeds of sale may be transferred or

1 assigned by gift or otherwise, from any literary, cinematic,
2 or other account of the crime for which she or he was
3 convicted. ~~A conviction shall be defined as a guilty verdict~~
4 ~~by a jury or judge, or a guilty or nolo contendere plea by the~~
5 ~~defendant, regardless of adjudication of guilt.~~ The lien
6 attaches ~~shall attach~~ at the time of the conviction in county
7 or circuit court. In the event of an appeal, the funds must
8 ~~will~~ be held in the Revolving Escrow Trust Fund of the
9 Department of Legal Affairs until the appeal is resolved.

10 (3) A lien prior in dignity to all others exists in
11 favor of the state upon the profits from the sale of
12 memorabilia payable to or accruing to a convicted felon, a
13 representative of a convicted felon, or a profiteer of a
14 felony, including any person to whom the profits from the sale
15 of memorabilia may be transferred or assigned by gift or
16 otherwise. The lien attaches at the time of the conviction in
17 county or circuit court. In the event of an appeal, the funds
18 must be held in the Revolving Escrow Trust Fund of the
19 Department of Legal Affairs until the appeal is resolved.

20 ~~(4)(2)~~ The funds in the proceeds of such account shall
21 be distributed in the following order:

22 (a) Twenty-five percent to the dependents of the
23 convicted felon. If there are no dependents, this portion
24 shall be distributed to the Crimes Compensation Trust Fund to
25 be distributed as awards for crime victims.

26 (b) Twenty-five percent to the victim or victims of
27 the crime or to their dependents, to the extent of their
28 damages as determined by the court in the lien enforcement
29 proceedings. If there are no victims or dependents, or if
30 their damages are less than 25 percent of the proceeds, this
31 portion, or its remainder, shall be distributed to the Crimes

1 Compensation Trust Fund to be distributed as awards to crime
2 victims.

3 (c) After payments have been made pursuant to
4 paragraph (a) or paragraph (b), an amount equal to pay all
5 court costs in the prosecution of the convicted felon, which
6 includes ~~shall include~~, but is not ~~be~~ limited to, jury fees
7 and expenses, court reporter fees, and reasonable per diem for
8 the prosecuting attorneys for the state, shall be deposited
9 into ~~go to~~ the General Revenue Fund. Additional costs shall be
10 assessed for the computed per capita cost of imprisonment or
11 supervision by the state or county correctional system. The
12 ~~Such~~ costs shall be determined and certified by the
13 prosecuting attorney and the imprisoning entity and subject to
14 review by the Auditor General.

15 (d) The rest, residue, and remainder to the Crimes
16 Compensation Trust Fund to be distributed as awards to crime
17 victims.

18 ~~(5)(3)~~ A judge may place a lien prior in dignity to
19 all others in favor of the state or county upon any financial
20 settlement payable to or accruing to a convicted felon
21 ~~offender or a representative of a convicted felon person on~~
22 ~~her or his behalf~~, as a result of injury incurred during or at
23 the time of a violation of the state law, or as a result of an
24 attempt to flee apprehension for the offense for which the
25 offender was convicted. ~~A conviction is defined as in~~
26 ~~subsection (1)~~. The lien shall be attached by order of the
27 judge at the time of the conviction in county or circuit
28 court. In the event of an appeal, the funds shall be held in
29 the Revolving Escrow Trust Fund of the Department of Legal
30 Affairs until the appeal is resolved.

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1 ~~(6)(4)~~ The financial settlement must ~~proceeds of such~~
2 ~~account shall~~ be distributed in the following order:

3 (a) Payment of all medical care, treatment,
4 hospitalization, and transportation resulting from the said
5 injury.

6 (b) Payment to the victim or victims of the crime or
7 to their dependents, to the extent of their damages as
8 determined by the court in the lien enforcement proceeding.

9 (c) Payment of all court costs in the prosecution of
10 the convicted felon, which includes ~~shall include~~, but is not
11 ~~be~~ limited to, jury fees and expense, court reporter fees, and
12 reasonable per diem for the prosecuting attorneys and public
13 defenders.

14 (d) Payment of cost of incarceration in state or
15 county facilities.

16 (e) The rest, residue, remainder to the injured party.

17 ~~(7)(5)~~ The department shall ~~is hereby authorized and~~
18 ~~directed to~~ report to the Department of Legal Affairs the
19 existence or reasonably expected existence of circumstances
20 that which would be covered by this section. Upon such
21 notification, the Department of Legal Affairs is authorized
22 and directed to take ~~such~~ legal action as ~~is~~ necessary to
23 perfect and enforce the lien created by this section.

24 Section 2. Section 960.291, Florida Statutes, is
25 amended to read:

26 960.291 Definitions.--When used in this act, the term:

27 (1) "Civil restitution lien" means a lien that which
28 exists in favor of crime victims, the state, its local
29 subdivisions, or an aggrieved party and that which attaches
30 against the real or personal property owned by a convicted
31 offender.

1 (2) "Convicted offender" means a defendant who has a
2 conviction ~~as defined herein~~ entered against the defendant in
3 the courts of this state.

4 (3) "Conviction" means a finding of guilt or the
5 acceptance of a plea of guilty or nolo contendere, regardless
6 of whether adjudication was withheld ~~guilty verdict by a jury~~
7 ~~or judge, or a guilty or nolo contendere plea by a defendant,~~
8 ~~regardless of adjudication of guilt.~~

9 (4) "Crime victim" means the victim of a crime and
10 includes the aggrieved party, the aggrieved party's estate if
11 the aggrieved party is deceased, and the aggrieved party's
12 next of kin if the aggrieved party is deceased as a result of
13 the conduct of a convicted offender. For the purposes of this
14 act, the term "crime victim" does not include any person who
15 participated in the criminal conduct or criminal episode
16 resulting in the conviction.

17 (5) "Damages or losses" includes:

18 (a) Damage or loss to a ~~any~~ crime victim which is
19 caused by the conduct of a convicted offender. This amount
20 shall be determined by the court, as provided for in s.
21 960.293.

22 (b) Damage or loss to the state and its local
23 subdivisions which is caused by imposition of a convicted
24 offender's sentence.

25 1. The ~~Such~~ damage or loss to the state and its local
26 subdivisions includes the costs of incarceration and other
27 correctional costs in connection with the implementation of a
28 state court's sentence. This cost shall be determined by the
29 court, as provided for in s. 960.293.

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1 2. ~~The~~ ~~Such~~ damage or loss to the state ~~does~~ ~~shall~~ not
2 include those costs on conviction for which the defendant may
3 be held liable under chapter 939.

4 (6) "Local subdivisions" means local subdivisions of
5 the State of Florida which maintain correctional facilities,
6 such as counties that maintain county correctional facilities
7 or counties that provide funds directly or indirectly for the
8 maintenance of correctional facilities within the county.

9 (7) "Real or personal property" includes any real or
10 personal property owned by the convicted offender, or that a
11 person possesses on the convicted offender's behalf,
12 including, but not limited to, any royalties, commissions,
13 proceeds of sale or profits from the sale of memorabilia, as
14 defined in s. 944.512, or any other thing of value accruing to
15 the convicted offender, or a person on the convicted
16 offender's behalf. The term "real or personal property"
17 specifically includes any financial settlement or court award
18 payable or accruing to a convicted offender or to a person on
19 behalf of the convicted offender. ~~A~~ ~~No~~ civil restitution lien
20 created pursuant to ~~the provisions of~~ this act may not be
21 foreclosed on real property that ~~which~~ is the convicted
22 offender's homestead under s. 4, Art. X of the State
23 Constitution.

24 (8) "Sentence" means the court-imposed sentence of a
25 convicted offender.

26 Section 3. This act shall take effect July 1, 2005.

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SENATE SUMMARY

Provides definitions concerning the sale of literary accounts and memorabilia by and on behalf of a convicted felon. Provides for a lien in favor of the state on the proceeds of the sale of literary accounts and materials and on the profits of sale of memorabilia payable to or accruing to a convicted felon, a representative of the convicted felon, or a profiteer of a felony. Provides for the distribution of the proceeds or profits of the sale of literary accounts or memorabilia. Revises definitions with respect to civil restitution liens to conform to changes made by the act.