

# 52:4B-61

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2003                    **CHAPTER:** 190  
**NJSA:** 52:4B-61            (Proceeds from sale of criminal memorabilia)

**BILL NO:** S817                  (Substituted for A2033)

**SPONSOR(S):** Girgenti and others

**DATE INTRODUCED:** January 24, 2002

**COMMITTEE:**                **ASSEMBLY:** Law and Public Safety

**SENATE:** Law and Public Safety

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** June 23, 2003

**SENATE:** June 23, 2003

**DATE OF APPROVAL:** October 15, 2003

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)  
(Amendments during passage denoted by superscript numbers)

#### S817

[SPONSORS STATEMENT](#): (Begins on page 3 of original bill) Yes

**COMMITTEE STATEMENT:**                    [ASSEMBLY:](#) Yes

[SENATE:](#) Yes

[FLOOR AMENDMENT STATEMENT:](#) Yes

[LEGISLATIVE FISCAL ESTIMATE:](#) Yes

#### A2033

[SPONSORS STATEMENT](#): (Begins on page 3 of original bill) Yes  
Bill and Sponsors Statement identical to S817

**COMMITTEE STATEMENT:**                    [ASSEMBLY:](#) Yes  
Identical to Assembly Statement for S817

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2003, CHAPTER 190, *approved October 15, 2003*  
Senate, No. 817 (*First Reprint*)

1 AN ACT concerning certain profits related to crime <sup>1</sup>[and amending],  
2 supplementing Title 52 of the Revised Statutes and repealing<sup>1</sup>  
3 P.L.1983, c.33.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 <sup>1</sup>[1. Section 2 of P.L.1983, c.33 (C.52:4B-27) is amended to read  
9 as follows:

10 2. As used in this act:

11 a. "Victim" means any person who suffers personal injury or death  
12 or incurs loss of or injury to personal or real property as a result of the  
13 crime;

14 b. "Victim's representative" means one who represents or stands  
15 in the place of a victim, including but not limited to a spouse, parent,  
16 relative, guardian, dependent, heir, or executor;

17 c. "Profiteer of a crime" or "profiteer" means any person who sells  
18 or transfers for profit any memorabilia or other property or item of a  
19 person convicted or accused of a crime in this State, the value of  
20 which is enhanced by the notoriety gained from the commission of the  
21 crime for which the person was convicted or accused.

22 (cf: P.L.1983, c.33, s.2)]<sup>1</sup>

23

24 <sup>1</sup>[2. Section 3 of P.L.1983, c.33 (C.52:4B-28) is amended to read  
25 as follows:

26 3. Every person, firm, corporation, partnership, association or  
27 other legal entity contracting with a person convicted or accused of a  
28 crime in this State or an agent, assignee, beneficiary, conservator,  
29 executor, guardian, representative, relative, friend, associate or  
30 conspirator of a person convicted or accused of a crime in this State,  
31 with respect to the reenactment of the crime, by way of a movie, book,  
32 magazine article, other literary expression, recording, radio or  
33 television presentation, live entertainment or presentation of any  
34 kind[, or from the expression of the person's thoughts, feelings,  
35 opinions or emotions regarding the crime,] that deals primarily with  
36 the crime for which the person was convicted or accused, shall submit  
37 a copy of the contract to the board and shall pay over to the board all

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly floor amendments adopted October 17, 2002.

1 moneys which would otherwise, by terms of the contract, be owing the  
2 person convicted or accused of a crime in this State or an agent,  
3 assignee, beneficiary, conservator, executor, guardian, representative,  
4 relative, friend, associate or conspirator of a person convicted or  
5 accused of a crime in this State. In the case of a sale or transfer by the  
6 profiteer of a crime, the profiteer shall pay over to the board all profits  
7 which would be owing to the profiteer. The board shall deposit these  
8 moneys in an interest bearing escrow account for the benefit of and  
9 payable to any victim of the convicted or accused person or the  
10 victim's representative, provided that the person is eventually  
11 convicted of the crime and that the victim or victim's representative  
12 brings, within five years of the date of the establishment of the escrow  
13 account, a civil action for damages resulting from the crime, or has  
14 already obtained a judgment for damages resulting from the crime, in  
15 a court of competent jurisdiction and files notice of such action with  
16 the board and recovers a money judgment for damages resulting from  
17 the crime against the person or an agent, assignee, beneficiary,  
18 conservator, executor, guardian, representative, relative, friend,  
19 associate or conspirator of a person convicted or accused of a crime  
20 in this State. In the case of a sale or transfer by a profiteer of a crime  
21 and upon adequate demonstration by the profiteer, the court may  
22 exclude from the escrow account that portion of the profits that  
23 represents the inherent value of the memorabilia, property or item sold  
24 or transferred and exclusive of the amount of the enhancement to the  
25 value due to the notoriety of the convicted or accused person.

26 (cf: P.L.1983, c.33, s.3)]<sup>1</sup>

27

28 <sup>1</sup>1. a. The Legislature finds:

29 (1) The State of New Jersey has a compelling interest in preventing  
30 any person who is convicted of a crime from directly or indirectly  
31 profiting from the crime or circumstances surrounding the crime.

32 (2) To that end, the State has established the Victims of Crime  
33 Compensation Board to help compensate victims of crime for their  
34 loss.

35 b. The Legislature declares that it is altogether fitting and proper  
36 and within the public interest to provide a mechanism where profits  
37 from a crime that are received by a convicted person should be  
38 available as restitution to the victim of crime.<sup>1</sup>

39

40 <sup>1</sup>2. For the purposes of this act:

41 a. "Crime" means:

42 (1) any crime as defined under the laws of this State; or

43 (2) any offense in any jurisdiction which includes all of the essential  
44 elements of any crime as defined under the laws of this State and

45 (a) the crime victim was a resident of this State at the time of the  
46 commission of the offense; or

1     (b) the act or acts constituting the offense occurred in whole or in  
2 part in this State.

3     b. "Profits from a crime" means:

4       (1) any property obtained through or income generated from the  
5 commission of a crime of which the defendant was convicted;

6       (2) any property obtained by or income generated from the sale,  
7 conversion or exchange of proceeds of a crime, including any gain  
8 realized by such sale, conversion or exchange; and

9       (3) any property which the defendant obtained or income generated  
10 as a result of having committed the crime, including any assets  
11 obtained through the use of unique knowledge obtained during the  
12 commission of, or in preparation for the commission of, a crime, as  
13 well as any property obtained by or income generated from the sale,  
14 conversion or exchange of such property and any gain realized by such  
15 sale, conversion or exchange.

16     c. "Funds of a convicted person" means all funds and property  
17 received from any source by a person convicted of a crime, or by the  
18 representative of such person, including the convicted person's spouse,  
19 children, parents, siblings or such other person whom a court of  
20 competent jurisdiction may deem to be the alter ego of the convicted  
21 person, giving due regard to the purpose and intent of this act, but  
22 excluding child support and earned income, where such person:

23       (1) is an inmate or prisoner serving a sentence under the custody  
24 and control of the Department of Corrections and includes funds  
25 received on behalf of an inmate or prisoner and deposited in an inmate  
26 or prisoner account to the credit of the inmate or prisoner.

27       (2) is not an inmate or prisoner, but who is serving a sentence of  
28 probation or conditional discharge or is presently subject to a term of  
29 post release supervision, but shall include earned income earned during  
30 a period in which such person was not in compliance with the  
31 conditions of probation, conditional discharge or post release  
32 supervision; or

33       (3) is no longer subject to a sentence of probation, conditional  
34 discharge or post release supervision, and where, within the previous  
35 three years, the full or maximum term or period terminated or expired  
36 or such person was granted a discharge by the State Parole Board  
37 pursuant to applicable law, or granted a discharge or termination from  
38 probation pursuant to applicable law or granted a discharge or  
39 termination under applicable federal or State law, rules or regulations  
40 prior to the expiration of such full or maximum term or period; and  
41 includes only:

42       (a) those funds paid to such person as a result of any interest, right,  
43 right of action, asset, share, claim, recovery or benefit of any kind that  
44 the person obtained, or that accrued in favor of such person, prior to  
45 the expiration of such sentence, term or period;

46       (b) any recovery or award collected in a lawsuit after expiration of

1 such sentence where the right or cause of action accrued prior to the  
2 expiration or service of such sentence; and

3 (c) earned income earned during a period in which such person was  
4 not in compliance with the conditions of probation, conditional release  
5 or post release supervision.

6 d. "Crime victim" means:

7 (1) the victim of a crime;

8 (2) the representative of a crime victim;

9 (3) a Good Samaritan, as provided in P.L.1963, c.140 (C.2A:62A-  
10 2 et seq.);

11 (4) the Victims of Crime Compensation Board or other  
12 governmental agency that has received an application for or provided  
13 financial assistance or compensation to the victim.

14 e. "Earned income" means income derived from one's own labor or  
15 through active participation in a business, but does not include income  
16 from dividends or investments.

17 f. "Board" means the Victims of Crime Compensation Board  
18 established pursuant to section 3 of P.L.1971, c.317 (C.52:4B-3).<sup>1</sup>

19  
20 <sup>13.</sup> a. Every person, firm, corporation, partnership, association or  
21 other legal entity, or representative of such person, firm, corporation,  
22 partnership, association or entity, which knowingly contracts for, pays,  
23 or agrees to pay: (1) any profits from a crime to a person charged with  
24 or convicted of that crime, or to the representative of such person, or  
25 (2) any funds of a convicted person where such conviction is for a  
26 crime and the value, combined value or aggregate value of the  
27 payment or payments of such funds exceeds or will exceed \$10,000  
28 shall give written notice to the board of the payment or obligation to  
29 pay as soon as practicable after discovering that the payment or  
30 intended payment constitutes profits from a crime or funds of a  
31 convicted person.

32 b. Notwithstanding subsection a. of this section, whenever the  
33 payment or obligation to pay involves funds of a convicted person that  
34 a superintendent of a correctional facility receives or will receive on  
35 behalf on an inmate or prisoner serving a sentence with the  
36 Department of Corrections and deposits or will deposit in an inmate  
37 or prisoner account to the credit of the inmate or prisoner and the  
38 value, combined value or aggregate value of such funds exceeds or  
39 will exceed \$10,000, the superintendent shall also give written notice  
40 to the board. Further, whenever the State makes payment or has an  
41 obligation to pay funds of a convicted person and the value, combined  
42 value or aggregate value of such funds exceeds or will exceed  
43 \$10,000, the State shall also give written notice to the board. In all  
44 other instances where the payment or obligation to pay involves funds  
45 of a convicted person and the value, combined value or aggregate  
46 value of such funds exceeds or will exceed \$10,000, the convicted

1 person who receives or will receive such funds, or the representative  
2 of such person, shall give written notice to the board.

3 c. The board, upon receipt of notice of a contract, an agreement to  
4 pay or payment of profits from a crime or funds of a convicted person  
5 pursuant to subsections a. or b. of this section, or upon receipt of  
6 notice of funds of a convicted person from the superintendent where  
7 the inmate or prisoner is confined, shall notify all known crime victims  
8 of the convicted person of the existence of such profits or funds at  
9 their last known address.<sup>1</sup>

10  
11 <sup>14.</sup> Notwithstanding any other law to the contrary, any crime  
12 victim shall have the right to bring a civil action in a court of  
13 competent jurisdiction to recover money damages from a person  
14 convicted of a crime of which the crime victim is a victim, or the  
15 representative of that convicted person, within three years of the  
16 discovery of any profits from a crime or funds of a convicted person,  
17 as those terms are defined in this act. Notwithstanding any other  
18 provision of law to the contrary, a judgment obtained pursuant to this  
19 section shall not be subject to execution or enforcement against the  
20 first \$1,000 dollars deposited in an inmate account to the credit of the  
21 inmate or in a prisoner account to the credit of the prisoner. In  
22 addition, where the civil action involves funds of a convicted person  
23 and such funds were recovered by the convicted person pursuant to a  
24 judgment obtained in a civil action, a judgment obtained pursuant to  
25 this section may not be subject to execution or enforcement against a  
26 portion thereof. If an action is filed pursuant to this section after the  
27 expiration of all other applicable statutes of limitation, any other crime  
28 victims must file any action for damages as a result of the crime within  
29 three years of the actual discovery of such profits or funds, or within  
30 three years of actual notice received from or notice published by the  
31 board of such discovery, whichever is later.<sup>1</sup>

32  
33 <sup>15.</sup> Upon filing an action pursuant to section 4 of this act, the  
34 crime victim shall give notice to the board of the filing by delivering  
35 a copy of the summons and complaint to the board. The crime victim  
36 may also give such notice to the board prior to filing the action so as  
37 to allow the board to apply for any appropriate provisional remedies  
38 which are otherwise authorized to be invoked prior to the  
39 commencement of an action.<sup>1</sup>

40  
41 <sup>16.</sup> Upon receipt of a copy of a summons and complaint, or upon  
42 receipt of notice from the crime victim prior to filing the action as  
43 provided in section 5 of this act, the board shall immediately take such  
44 actions as are necessary to:

45 a. notify all other known crime victims of the alleged existence of  
46 profits from a crime or funds of a convicted person by certified mail,

1 return receipt requested, where the victims' names and addresses are  
2 known by the board;

3 b. publish, at least once every six months for three years from the  
4 date it is initially notified by a victim, pursuant to section 5 of this act,  
5 a legal notice in newspapers of general circulation in the county  
6 wherein the crime was committed and in counties contiguous to such  
7 county advising any crime victims of the existence of profits from a  
8 crime or funds of a convicted person. The board may, in its discretion,  
9 provide for such additional notice as it deems necessary;

10 c. avoid the wasting of the assets identified in the complaint as the  
11 newly discovered profits from a crime or as funds of a convicted  
12 person.<sup>1</sup>

13

14 <sup>17.</sup> The board, acting on behalf of the plaintiff and all other victims,  
15 shall have the right to apply for any and all provisional remedies that  
16 are also otherwise available to the plaintiff.

17 a. The provisional remedies of attachment, injunction, receivership  
18 and notice of pendency available to the plaintiff under the civil practice  
19 law and rules, shall also be available to the board in all actions under  
20 this section.

21 b. On a motion for a provisional remedy, the moving party shall  
22 state whether any other provisional remedy has previously been sought  
23 in the same action against the same defendant. The court may require  
24 the moving party to elect between those remedies to which it would  
25 otherwise be entitled.<sup>1</sup>

26

27 <sup>18.</sup> a. Whenever it appears that a person or entity has knowingly  
28 and willfully failed to give notice in violation of subsection a. of  
29 section 3 of this act, the board shall be authorized to serve a notice of  
30 hearing upon the person or entity by personal service or by registered  
31 or certified mail. The notice shall contain the time, place and purpose  
32 of the hearing. In addition, the notice shall be accompanied by a  
33 petition alleging facts of an evidentiary character that support or tend  
34 to support that the person or entity, who shall be named therein as a  
35 respondent, knowingly and willfully failed to give the notice required  
36 in subsection a. of section 3 of this act. Service of the notice and  
37 petition shall take place at least 15 days prior to the date of the  
38 hearing.

39 b. The chairperson of the board, or any board member designated  
40 by the chairperson, shall preside over the hearing. The presiding  
41 member shall administer oaths and may issue subpoenas. The presiding  
42 member shall not be bound by the rules of evidence or civil procedure,  
43 but the presiding member's determination shall be based on a  
44 preponderance of the evidence. At the hearing, the burden of proof  
45 shall be on the board, which shall be represented by the counsel to the  
46 board or another person designated by the board. The board shall



1 produce witnesses and present evidence in support of the alleged  
2 violation, which may include relevant hearsay evidence. The  
3 respondent, who may appear personally at the hearing, shall have the  
4 right of counsel and may cross-examine witnesses and produce  
5 evidence and witnesses in his behalf, which may include relevant  
6 hearsay evidence. The issue of whether the person who received an  
7 alleged payment or obligation to pay committed the underlying crime  
8 shall not be relitigated at the hearing. Where the alleged violation is  
9 the failure to give notice of a payment amount involving two or more  
10 payments the combined value or aggregate value of which exceeds  
11 \$10,000, no violation shall be found unless it is shown that such  
12 payments were intentionally structured to conceal their character as  
13 funds of a convicted person. At the conclusion of the hearing, if the  
14 presiding member is not satisfied that there is a preponderance of  
15 evidence in support of a violation, the member shall dismiss the  
16 petition. If the presiding member is satisfied that there is a  
17 preponderance of the evidence that the respondent committed one or  
18 more violations, the member shall so find. Upon such a finding, the  
19 presiding member shall prepare a written statement, to be made  
20 available to the respondent and respondent's counsel, indicating the  
21 evidence relied on and the reasons for finding the violation. The board  
22 shall adopt, promulgate, amend and repeal administrative rules and  
23 regulations governing the procedures to be followed with respect to  
24 hearings, including rules and regulations for the administrative appeal  
25 of a decision made pursuant to this paragraph, provided such rules and  
26 regulations are consistent with the provisions of this section.

27 c. Whenever it is found that a respondent knowingly and willfully  
28 failed to give the required notice, the board shall impose an assessment  
29 of up to the amount of the payment or obligation to pay and a civil  
30 penalty of up to \$1,000 or ten percent of the payment or obligation to  
31 pay, whichever is greater. If a respondent fails to pay the assessment  
32 and civil penalty imposed, the assessment and civil penalty may be  
33 recovered from the respondent by an action brought by the Attorney  
34 General, upon the request of the board, in any court of competent  
35 jurisdiction. The board shall deposit the assessment in an escrow  
36 account pending the expiration of the three year statute of limitations  
37 authorized by section 4 of this act to preserve such funds to satisfy a  
38 civil judgment in favor of a person who is a victim of a crime  
39 committed by the convicted person to whom such failure to give notice  
40 relates. The board shall pay the civil penalty to the State Treasurer  
41 who shall deposit the money in the State treasury. The board shall  
42 then notify any crime victim or crime victims, who may have a claim  
43 against the convicted person, of the existence of such moneys. Such  
44 notice shall instruct such person or persons that they may have a right  
45 to commence a civil action against the convicted person, as well as any  
46 other information deemed necessary by the board. Upon a crime

1 victim's presentation to the board of a civil judgment for damages  
2 incurred as a result of the crime, the board shall satisfy up to 100  
3 percent of that judgment, including costs and disbursements as taxed  
4 by the clerk of the court, with the escrowed fund, but in no event shall  
5 the amount of all judgments, costs and disbursements satisfied from  
6 such escrowed funds exceed the amount in escrow. If more than one  
7 such crime victim indicates to the board that they intend to commence  
8 or have commenced a civil action against the convicted person, the  
9 board shall delay satisfying any judgment, costs and disbursements  
10 until the claims of all such crime victims are reduced to judgment. If  
11 the aggregate of all judgments, costs and disbursement obtained  
12 exceeds the amount of escrowed funds, the amount used to partially  
13 satisfy each judgment shall be reduced to a pro rata share.

14 After expiration of the three year statute of limitations period  
15 established in section 4 of this act, the board shall review all judgments  
16 that have been satisfied from such escrowed funds. In the event no  
17 claim was filed or judgment obtained prior to the expiration of the  
18 three year statute of limitations, the board shall return the escrowed  
19 amount to the respondent. In the event a claim or claims are pending  
20 at the expiration of the statute of limitations, such funds shall remain  
21 escrowed until the final determination of all such claims to allow the  
22 board to satisfy any judgment which may be obtained by the crime  
23 victim. Upon the final determination of all such claims and the  
24 satisfaction of up to 100 percent of such claims by the board, the  
25 board shall be authorized to impose an additional civil penalty of up to  
26 \$1,000 or ten percent of the payment or obligation to pay, whichever  
27 is greater. Prior to imposing any such penalty, the board shall serve a  
28 notice upon the respondent by personal service or by registered or  
29 certified mail of the intent of the board to impose such penalty 30 days  
30 after the date of the notice and of the opportunity to submit  
31 documentation concerning the board's determination. After imposing  
32 and deducting any such additional civil penalty, the board shall  
33 distribute 50 percent of the remaining escrowed funds to the State  
34 Treasurer, who shall deposit the money in the General Fund for  
35 general State purposes. The other 50 percent of the remaining  
36 escrowed funds shall be distributed to the board and may be used for  
37 purposes the board deems appropriate, including, but not limited to,  
38 awarding scholarships pursuant to P.L.2000, c.163 (C.18A:71B-53 et  
39 seq.), the Tony Pompelio Commemorative Scholarship Fund Act.

40 d. Notwithstanding any other provision of law to the contrary, an  
41 alleged failure by a convicted person to give notice under this act may  
42 not result in proceedings for an alleged violation of the conditions of  
43 probation, conditional release or post release supervision unless: one  
44 or more claims were made by a crime victim against the convicted  
45 person pursuant to this section, and the crime victims board imposes  
46 an assessment or penalty upon the convicted person pursuant to this

1 section, and the convicted person fails to pay the total amount of the  
2 assessment or penalty within sixty days of the imposition of such  
3 assessment or penalty.

4 e. Records maintained by the board and proceedings by the board  
5 or a board member based thereon regarding a claim submitted by a  
6 victim or a claimant shall be deemed confidential.<sup>1</sup>

7  
8 <sup>1</sup>9. a. A crime victim shall have a cause of action against any  
9 person who offers for sale or purports to offer for sale, any  
10 memorabilia or other property or item of the defendant, the value of  
11 which is enhanced by the notoriety gained from the commission of the  
12 crime.

13 b. Upon proof, by a preponderance of the evidence, of a person's  
14 violation of this section and of resulting damages, the person shall be  
15 liable as follows:

16 (1) To the person or persons injured, for an award in the amount  
17 of damages incurred as a result of the sale or purported sale of  
18 defendant's property, including damages for any emotional distress  
19 suffered as a result of the sale, such punitive damages as may be  
20 assessed, and any reasonable attorney's fees and costs of suit incurred;  
21 and

22 (2) Such injunctive relief as the court may deem necessary to avoid  
23 the defendant's continued violation.<sup>1</sup>

24  
25 <sup>1</sup>10. If any provision of this act or the application thereof to any  
26 person or circumstance is held invalid, the invalidity shall not affect  
27 other provisions or applications of the sections which can be given  
28 effect without the invalid provision or application, and to this end the  
29 provisions of this act are severable.<sup>1</sup>

30  
31 <sup>1</sup>11. P.L.1983, c.33 (C.52:4B-28 et seq.) is repealed.<sup>1</sup>

32  
33 <sup>1</sup>[3.] 12.<sup>1</sup> This act shall take effect immediately.

34  
35  
36 \_\_\_\_\_  
37  
38 Requires proceeds from sale of criminal memorabilia be deposited into  
39 escrow account for victims.

# SENATE, No. 817

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JANUARY 24, 2002

**Sponsored by:**

**Senator JOHN A. GIRGENTI**

**District 35 (Bergen and Passaic)**

**Assemblyman KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex and Passaic)**

**Assemblyman PETER J. BARNES, JR.**

**District 18 (Middlesex)**

**SYNOPSIS**

Requires proceeds from sale of criminal memorabilia be deposited into escrow account for victims.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 10/18/2002)

S817 GIRGENTI

2

1 AN ACT concerning certain profits related to crime and amending  
2 P.L.1983, c.33.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 2 of P.L.1983, c.33 (C.52:4B-27) is amended to read as  
8 follows:

9 2. As used in this act:

10 a. "Victim" means any person who suffers personal injury or death  
11 or incurs loss of or injury to personal or real property as a result of the  
12 crime;

13 b. "Victim's representative" means one who represents or stands  
14 in the place of a victim, including but not limited to a spouse, parent,  
15 relative, guardian, dependent, heir, or executor;

16 c. "Profiteer of a crime" or "profiteer" means any person who sells  
17 or transfers for profit any memorabilia or other property or item of a  
18 person convicted or accused of a crime in this State, the value of  
19 which is enhanced by the notoriety gained from the commission of the  
20 crime for which the person was convicted or accused.

21 (cf: P.L.1983, c.33, s.2)

22  
23 2. Section 3 of P.L.1983, c.33 (C.52:4B-28) is amended to read as  
24 follows:

25 3. Every person, firm, corporation, partnership, association or  
26 other legal entity contracting with a person convicted or accused of a  
27 crime in this State or an agent, assignee, beneficiary, conservator,  
28 executor, guardian, representative, relative, friend, associate or  
29 conspirator of a person convicted or accused of a crime in this State,  
30 with respect to the reenactment of the crime, by way of a movie, book,  
31 magazine article, other literary expression, recording, radio or  
32 television presentation, live entertainment or presentation of any  
33 kind[, or from the expression of the person's thoughts, feelings,  
34 opinions or emotions regarding the crime,] that deals primarily with  
35 the crime for which the person was convicted or accused, shall submit  
36 a copy of the contract to the board and shall pay over to the board all  
37 moneys which would otherwise, by terms of the contract, be owing the  
38 person convicted or accused of a crime in this State or an agent,  
39 assignee, beneficiary, conservator, executor, guardian, representative,  
40 relative, friend, associate or conspirator of a person convicted or  
41 accused of a crime in this State. In the case of a sale or transfer by the  
42 profiteer of a crime, the profiteer shall pay over to the board all profits  
43 which would be owing to the profiteer. The board shall deposit these

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 moneys in an interest bearing escrow account for the benefit of and  
2 payable to any victim of the convicted or accused person or the  
3 victim's representative, provided that the person is eventually  
4 convicted of the crime and that the victim or victim's representative  
5 brings, within five years of the date of the establishment of the escrow  
6 account, a civil action for damages resulting from the crime, or has  
7 already obtained a judgment for damages resulting from the crime, in  
8 a court of competent jurisdiction and files notice of such action with  
9 the board and recovers a money judgment for damages resulting from  
10 the crime against the person or an agent, assignee, beneficiary,  
11 conservator, executor, guardian, representative, relative, friend,  
12 associate or conspirator of a person convicted or accused of a crime  
13 in this State. In the case of a sale or transfer by a profiteer of a crime  
14 and upon adequate demonstration by the profiteer, the court may  
15 exclude from the escrow account that portion of the profits that  
16 represents the inherent value of the memorabilia, property or item sold  
17 or transferred and exclusive of the amount of the enhancement to the  
18 value due to the notoriety of the convicted or accused person.  
19 (cf: P.L.1983, c.33, s.3)

20

21 3. This act shall take effect immediately.

22

23

24

## STATEMENT

25

26 This bill amends New Jersey's Son of Sam law (P.L.1983, c.33;  
27 C.52:4B-28) to include the sale or transfer of criminal memorabilia.28 The Son of Sam law is intended to prevent perpetrators of  
29 sensational crimes from benefitting from their acts. The law requires  
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31 escrow to the Violent Crimes Compensation Board to be used for the  
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44 about his crime, even incidentally or tangentially.45 Once an underground market, criminal collectibles and memorabilia,  
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**S817 GIRGENTI**

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4 groups have protested the sale of these items as further exploitation of  
5 the victims and their families.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### SENATE, No. 817

# STATE OF NEW JERSEY

DATED: MAY 9, 2002

The Assembly Law and Public Safety Committee reports favorably Senate Bill No. 817.

Senate Bill No. 817 amends New Jersey's Son of Sam law, P.L.1983, c.33 (C.52:4B-26 et seq.), to include the sale or transfer of criminal memorabilia.

The Son of Sam law is intended to prevent perpetrators of sensational crimes from benefitting from their acts. The law requires that proceeds from a book or movie reenacting a crime be placed in escrow to the Violent Crimes Compensation Board to be used for the benefit of the victim or survivors.

This bill amends that law to require that the profits derived from the sale or transfer of criminal memorabilia also be deposited into an escrow account for the victims. The bill further provides that a court may exclude from the escrow account that portion of the profits that represents the inherent value of the memorabilia, property or item sold or transferred and exclusive of the enhancement to the item's value because of the offender's notoriety.

The bill also amends language in the Son of Sam law which was found to be overinclusive by the United State Supreme Court in a challenge to a similar New York law. The court held that the law was overinclusive because it applied to works on any subject that expressed the author's thoughts or recollections about his crime, even incidentally or tangentially.

Once an underground market, criminal collectibles and memorabilia, dubbed "murderabilia" by some critics, have become more widely available due to the popularity of Internet auction sites. Items for sale produced by criminals themselves have included artwork, autographs, hand prints, hair samples and fingernail clippings. Many victim's rights groups have protested the sale of these items as further exploitation of the victims and their families.

As reported by the committee, this bill is identical to Assembly Bill No. 2033, also reported by the committee on this same date.



SENATE LAW AND PUBLIC SAFETY AND VETERANS'  
AFFAIRS COMMITTEE

STATEMENT TO

**SENATE, No. 817**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 25, 2002

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably Senate Bill No. 817.

This bill amends New Jersey's Son of Sam law (P.L.1983, c.33; C.52:4B-28) to include the sale or transfer of criminal memorabilia.

The Son of Sam law is intended to prevent perpetrators of sensational crimes from benefitting from their acts. The law requires that proceeds from a book or movie reenacting a crime be placed in escrow to the Violent Crimes Compensation Board to be used for the benefit of the victim or survivors.

This bill amends that law to require that the profits derived from the sale or transfer of criminal memorabilia also be deposited into an escrow account for the victims. The bill further provides that a court may exclude from the escrow account that portion of the profits that represents the inherent value of the memorabilia, property or item sold or transferred and exclusive of the enhancement to the item's value because of the offender's notoriety. The bill also amends language in the Son of Sam law which was found to be overinclusive by the United State Supreme Court in a challenge to a similar New York law. The court held that the law was overinclusive because it applied to works on any subject that expressed the author's thoughts or recollections about his crime, even incidentally or tangentially.

Once an underground market, criminal collectibles and memorabilia, dubbed "murderabilia" by some critics, have become more widely available due to the popularity of Internet auction sites. Items for sale produced by criminals themselves have included artwork, autographs, handprints, hair samples and fingernail clippings. Many victim's rights groups have protested the sale of these items as further exploitation of the victims and their families.

**STATEMENT TO**  
**SENATE, No. 817**

with Assembly Floor Amendments  
(Proposed By Assemblyman O'TOOLE)

ADOPTED: OCTOBER 17, 2002

Senate Bill No. 817 amends New Jersey's Son of Sam law (P.L.1983, c.33; C.52:4B-28) to include the sale or transfer of criminal memorabilia.

These Assembly amendments revise the State's Son of Sam law to mirror New York State's version of that law.

The underlying purpose of the two laws is the same: to prevent the perpetrators of crimes from benefitting from their acts by requiring that any proceeds or profits accruing from their criminal acts be made available to the victims of those crimes.

Under the amended bill, any party offering or contracting to pay more than \$10,000 to an alleged perpetrator or an inmate or prisoner, or his representative, for information relating to the commission of a crime, property obtained through the commission of a crime, property obtained through the commission a crime or memorabilia relating to a crime must so notify the Victims of Crime Compensation Board. In turn, the board must attempt to notify all the known victims of that particular crime.

The moneys are deposited in a special escrow account. Victims must notify the board that they intend to take action in civil court to secure a portion of those escrowed funds. Under the amended bill, victims would have three years in which to take action. During those three years, the board is obligated to publish a notice to reach out for other victims by indicating that these escrowed funds are available.

A party who fails to notify the board that it has offered or contracted to pay for information, property or memorabilia relating to a crime is subject to a penalty of up to \$1,000 or 10 percent of the amount of the offer or contract, whichever is greater. In addition, the party may be assessed an amount equal to the offering or contract. The assessment funds are subject to civil action by a victim.

Victims are eligible for all of the moneys deposited in the escrow account. If there is more than one victim entitled to these moneys, the funds are to be distributed on a pro-rata basis.

If no victims claim the moneys within three years, 50 percent of the escrowed amount is to be paid to the State Treasurer and used for State purposes. The remaining 50 percent of the escrowed amount is to be used by the Victims of Crime Compensation Board as it deems appropriate and may be used for scholarships awarded under the Tony Pompelio Commemorative Scholarship Fund Act.

The amendments also create a new civil cause of action for crime victims for the sale of memorabilia related to crime, the value of which is enhanced by the notoriety gained from the commission of the crime.

Finally, the amendments add a severability clause to the bill.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 817

### STATE OF NEW JERSEY

### 210th LEGISLATURE

DATED: SEPTEMBER 29, 2003

#### SUMMARY

**Synopsis:** Requires proceeds from sale of criminal memorabilia be deposited into escrow account for victims.

**Type of Impact:** Impact Unknown.

**Agencies Affected:** Department of Law and Public Safety, Department of Corrections

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>FY 2004</u></b>	<b><u>FY 2005</u></b>	<b><u>FY 2006</u></b>
<b>State Revenue</b>		Revenue Unknown	
<b>State Cost</b>		Cost Unknown	

- ! Requires that any party contracting to pay more than \$10,000 for criminal memorabilia deposit those funds into an escrow account for victims.
- ! Victims are eligible for all money deposited into the escrow account.
- ! If moneys are not claimed by victim within three years, 50 percent of the amount is paid to the State Treasurer and used for State purposes.
- ! Establishes a penalty of \$1,000, or ten percent of the amount offered for any person attempting to obtain information, property or memorabilia relating to a crime.

#### BILL DESCRIPTION

Senate Bill No. 817 [1R] of 2002 requires proceeds from sale of criminal memorabilia be deposited into an escrow account for victims. This bill attempts to prevent the perpetrators of crimes from benefitting from their acts by requiring that any proceeds or profits accruing from their criminal acts be made available to the victims of those crimes. Any party offering to pay more than \$10,000 to obtain information, property or memorabilia relating to a crime must notify the Victims of Crime Compensation Board (VCCB) and in turn the VCCB must attempt to notify

all the known victims of that particular crime. The victims would have three years in which to take action. If the board is not notified about a contract, the party is subject to a penalty of up to \$1,000 or ten percent of the amount offered, whichever is greater. The victims are eligible for all money deposited into the escrow account. If no one claims the money, 50 percent will be paid to the Treasurer and used for State purposes.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) estimates that the cost to implement the provisions of this bill will be nominal. While the division is uncertain of the amount of revenues that will be generated, it is suspected that the frequency of the sale of criminal memorabilia will be sporadic and thus indeterminate.

Section: *Law and Public Safety*

Analyst: *Kristin A. Brunner*  
*Assistant Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

# ASSEMBLY, No. 2033

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 11, 2002

**Sponsored by:**

**Assemblyman KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex and Passaic)**

**Assemblyman PETER J. BARNES, JR.**

**District 18 (Middlesex)**

**SYNOPSIS**

Requires proceeds from sale of criminal memorabilia be deposited into escrow account for victims.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/7/2002)**

A2033 O'TOOLE, BARNES

2

1 AN ACT concerning certain profits related to crime and amending  
2 P.L.1983, c.33.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 2 of P.L.1983, c.33 (C.52:4B-27) is amended to read as  
8 follows:

9 2. As used in this act:

10 a. "Victim" means any person who suffers personal injury or death  
11 or incurs loss of or injury to personal or real property as a result of the  
12 crime;

13 b. "Victim's representative" means one who represents or stands  
14 in the place of a victim, including but not limited to a spouse, parent,  
15 relative, guardian, dependent, heir, or executor;

16 c. "Profiteer of a crime" or "profiteer" means any person who sells  
17 or transfers for profit any memorabilia or other property or item of a  
18 person convicted or accused of a crime in this State, the value of  
19 which is enhanced by the notoriety gained from the commission of the  
20 crime for which the person was convicted or accused.

21 (cf: P.L.1983, c.33, s.2)

22

23 2. Section 3 of P.L.1983, c.33 (C.52:4B-28) is amended to read as  
24 follows:

25 3. Every person, firm, corporation, partnership, association or  
26 other legal entity contracting with a person convicted or accused of a  
27 crime in this State or an agent, assignee, beneficiary, conservator,  
28 executor, guardian, representative, relative, friend, associate or  
29 conspirator of a person convicted or accused of a crime in this State,  
30 with respect to the reenactment of the crime, by way of a movie, book,  
31 magazine article, other literary expression, recording, radio or  
32 television presentation, live entertainment or presentation of any  
33 kind[, or from the expression of the person's thoughts, feelings,  
34 opinions or emotions regarding the crime,] that deals primarily with  
35 the crime for which the person was convicted or accused, shall submit  
36 a copy of the contract to the board and shall pay over to the board all  
37 moneys which would otherwise, by terms of the contract, be owing the  
38 person convicted or accused of a crime in this State or an agent,  
39 assignee, beneficiary, conservator, executor, guardian, representative,  
40 relative, friend, associate or conspirator of a person convicted or  
41 accused of a crime in this State. In the case of a sale or transfer by the  
42 profiteer of a crime, the profiteer shall pay over to the board all profits  
43 which would be owing to the profiteer. The board shall deposit these

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 moneys in an interest bearing escrow account for the benefit of and  
2 payable to any victim of the convicted or accused person or the  
3 victim's representative, provided that the person is eventually  
4 convicted of the crime and that the victim or victim's representative  
5 brings, within five years of the date of the establishment of the escrow  
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8 a court of competent jurisdiction and files notice of such action with  
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## 25 STATEMENT

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**A2033 O'TOOLE, BARNES**

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4 groups have protested the sale of these items as further exploitation of  
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# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2033

# STATE OF NEW JERSEY

DATED: MAY 9, 2002

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