

ARKANSAS SENATE
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of Senate Bill No. 1041

"TO CREATE THE MUSEUM PROPERTY ACT."

Amendment No. 1 to Senate Bill No. 1041.

Amend Senate Bill No. 1041 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 13, Chapter 5 is amended to add an additional subchapter to read as follows:

13-5-1001. Short Title.

This subchapter shall be known and may be cited as the "Museum Property Act".

13-5-1002. Purpose.

The purpose of this subchapter is to:

(1) Establish procedures for vesting in a museum ownership of abandoned or undocumented property in the possession of the museum;

(2) Establish procedures to terminate loans of property to a museum;

(3) Allow a museum to conserve or dispose of loaned or undocumented property under certain conditions; and

(4) Limit actions to recover loaned or undocumented property.

13-5-1003. Definitions.

As used in this subchapter:

(1) "Address" means the most recent location of a claimant or lender as indicated by a museum's records pertaining to the property;

(2)(A) "Claimant" means a person who has established or claims entitlement to or some interest in property held by a museum.

(B) "Claimant" does not mean a lender;

(3) "Lender" means the person identified by the records of a museum as the owner or rightful possessor of a loan held by a museum;

(4)(A) "Loan" means property that a lender has placed in the custody of a museum.

(B) "Loan" does not include a consignment of property for sale or property donated to a museum;

(5)(A) "Museum" means an institution or entity located in Arkansas that:

(i) Is operated by a nonprofit corporation, trust,



association, public agency, or educational institution;

(ii) Is operated primarily for educational, scientific, historic preservation, cultural, or aesthetic purposes; and

(iii) Owns, borrows, cares for, exhibits, studies, archives, or catalogues property.

(B) "Museum" includes historical societies, historic sites, landmarks, parks, archives, monuments, botanical gardens, arboreta, zoos, nature centers, planetaria, aquaria, libraries, technology centers, and art, history, science, and natural history museums;

(6) "Permanent loan" means a loan to a museum for an indefinite term;

(7) "Person" means an individual, association, partnership, corporation, trust, estate, or other entity;

(8) "Property" means a document or tangible object, animate or inanimate, with intrinsic historic, scientific, artistic, or cultural value that is in the custody of a museum; and

(9) "Undocumented property" means property:

(A) That is held by a museum; and

(B) Whose ownership cannot be determined from the museum's records.

13-5-1004. Procedure for obtaining ownership of an abandoned loan.

(a) By complying with subsection (b) or (c) of this section, a museum may obtain ownership of a loan if:

(1) The loan agreement has expired; or

(2)(i) The loan has been in the museum's custody for more than ten (10) years; and

(ii) The loan agreement does not provide for a longer term for the loan or another disposition.

(b)(1) If the address of the lender is known, the museum shall send the notice required in subsection (d) of this section to the lender by certified or registered mail, return receipt requested.

(2)(A) If the return receipt showing receipt of the notice is returned and the lender fails to object within ninety (90) days of the date of the return receipt, the loan shall be considered abandoned and its ownership shall vest in the museum.

(B) If the museum did not receive a return receipt showing receipt of the notice, it may proceed in accordance with the provisions of subsection (c) of this section.

(c)(1) If the museum is unable to determine the identity of the lender or the lender's address, the museum shall publish the notice required under subsection (d) of this section at least one (1) time a week for four (4) consecutive weeks in at least one (1) newspaper with general circulation in:

(A)(i) The county of last known address of the lender; and

(ii) The county in which the museum is located; or

(B) The State of Arkansas.

(2) If the lender fails to object within ninety (90) days from the last date of the publication, the loan shall be considered abandoned and its ownership shall vest in the museum.

(d) The notice shall contain:

(1) The name, address, and telephone number of the museum;

(2) A complete description of the loan;

(3) The lender's identity if that information is available from the museum's records;

(4) The lender's last known address if that information is available from the museum's records; and

(5) A statement that the loan shall be considered abandoned and shall become the property of the museum if the lender or claimant does not make a timely objection in accordance with subsection (b) or (c) of this section, whichever is applicable.

13-5-1005. Museum's right to claim ownership of undocumented property.

(a) Undocumented property in the possession of a museum shall become the museum's property if no person has claimed the property within seven (7) years after the museum obtained possession of the undocumented property.

(b) This section does not vest ownership in the museum if the undocumented property is determined later to be stolen property.

13-5-1006. Duties of museum concerning a loan.

(a) At the time of a loan to a museum, the museum shall:

(1) Make and retain a written record of the following:

(A) The lender's name, address, and telephone number;

(B) A description of the loan;

(C) The date of the loan; and

(D) The expiration date of the loan; and

(2) Provide the lender with a signed receipt or copy of the loan agreement containing the information set out in subdivision (a)(1) of this section.

(b) The museum's general duties with respect to a loan include:

(1) Updating museum records whenever:

(A) A lender informs the museum of a change of address or change in the ownership of the loan; and

(B) The lender and museum negotiate a change in the terms of the loan;

(2) Providing the lender with notice about any update concerning the lender's loan; and

(3) Providing copies of §§ 13-5-1004, 13-5-1007, and 13-5-1009:

(A) To each lender who made a loan to the museum before the effective date of this subchapter and that loan is in the custody of the museum;

(B) To the lender at the time of the loan; and

(C) Upon a lender's request.

13-5-1007. Duties of lender concerning the lender's loan.

(a) A lender who has made a loan to a museum shall promptly notify the museum in writing about a change in:

(1) The lender's address; and

(2)(A) A change in the ownership of the loan.

(B)(i) It shall be the responsibility of the owner of a loan to provide sufficient proof of his or her ownership to the museum.

(ii) If there is a dispute about ownership, the museum shall not be liable for its good faith refusal to surrender a loan unless ordered by a court of competent jurisdiction.

(b) If the museum notifies the lender that the loan is terminated, the

lender shall:

(1) Acknowledge in writing the termination and inform the museum whether the lender wants the return of the loan; and

(2)(A) Retrieve the loan no later than six (6) months from the date of the museum's notice terminating the loan if the lender wants the loan returned.

(B) If the lender fails to retrieve the loan within the time set out in subdivision (b)(2)(A) of this section, the loan shall be considered abandoned and ownership shall vest in the museum.

13-5-1008. Lien for expenses for care of unclaimed property.

A museum has the right to claim a lien on unclaimed property for any expenses incurred while caring for the unclaimed property.

13-5-1009. Conservation measures.

(a) If immediate conservation is necessary to protect a loan, a museum's property, or the safety and welfare of the public and the museum's staff and the loan agreement between the museum and the lender does not provide otherwise, a museum has the right to apply conservation measures to a loan without the lender's permission.

(b) If immediate conservation is not necessary but conservation is needed to preserve the loan's value, a museum has the right to apply a conservation measure to a loan:

(1) After the museum has notified the lender by certified or registered mail, return receipt requested, that a conservation measure is needed; and

(2) If the lender or claimant:

(A) Does not respond to the notice within seven (7) days after the date on the return receipt showing receipt of the notice; or

(B) Refuses to consent to the protective measures and will not agree to the termination of the loan and the immediate retrieval of the loan.

(c) When a conservation measure is undertaken under subsection (a) or (b) of this section, the museum:

(1) Has a lien on the loan and on the proceeds of any disposition of the loan for the cost of the conservation measure; or

(2) Is not liable for any injury to or loss of the loan if the museum:

(A) Had a reasonable belief at the time conservation measures were taken that the measures were necessary; and

(B) Exercised reasonable care in the choice and application of conservation measures.

13-5-1010. Transfer of title from museum.

A person who acquires ownership of property from a museum that has claimed ownership of the property under this subchapter takes the property free of any claim by a claimant or lender.

13-5-1011. Records retention schedule.

A museum shall keep all records relating to loans and undocumented property while the museum has possession of the property or for twenty-five (25) years, whichever period of time is longer.

13-5-1012. Controls.

This subchapter controls in the event that it conflicts with any of the provisions of § 18-28-201 – 18-28-230."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Bryles

GLG/TRA - 03-11-2005 13:41

GLG102

Secretary