

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/24/05 S4/5/05

A Bill

HOUSE BILL 2823

5 By: Representative Mahony
6 By: Senator Bryles
7

For An Act To Be Entitled

10 AN ACT CONCERNING LOANED OR UNDOCUMENTED PROPERTY
11 IN THE POSSESSION OF MUSEUMS IN THE STATE OF
12 ARKANSAS; AND FOR OTHER PURPOSES.
13

Subtitle

15 AN ACT CONCERNING LOANED OR UNDOCUMENTED
16 PROPERTY IN THE POSSESSION OF MUSEUMS IN
17 THE STATE OF ARKANSAS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 *SECTION 1. Arkansas Code Title 13, Chapter 5, is amended to add an*
23 *additional subchapter to read as follows:*
24

25 13-5-1001. Short title.

26 This subchapter shall be known and may be cited as the "Museum Property
27 Act".
28

29 13-5-1002. Purpose.

30 The purpose of this subchapter is to:

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

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

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



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

2
3 13-5-1003. Definitions.

4 As used in this subchapter:

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

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

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

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

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

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

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

18 (i) Is operated by a nonprofit corporation, trust,
19 association, public agency, or educational institution;

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

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

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

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

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

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

35 (9) "Unclaimed property" means property meeting the following
36 conditions:

1 (A) The property was placed with the museum for exhibition
2 or other purposes; and

3 (B) The original person placing the property with the
4 museum, or a person acting legitimately on the original person's behalf, has
5 not contacted the museum in writing regarding the property for at least:

6 (i) Ten (10) years from the date of the beginning of
7 the period for which the property was placed with the museum, if the property
8 was placed with the museum for an indefinite or undetermined period; or

9 (ii) Five (5) years after the date upon which the
10 definite period in which the property was placed with the museum expired; and

11 (10)(A) "Undocumented property" means property:

12 (i) That is held by a museum; and

13 (ii) The ownership of which cannot be determined
14 from the museum's records.

15 (B) Undocumented property shall not be construed to
16 include loaned property.

17
18 13-5-1004. Procedure for obtaining ownership of an abandoned loan.

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

21 (1) The loan agreement has expired; or

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

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

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

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

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

36 (c)(1) If the museum is unable to determine the identity of the lender

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

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

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

6 (B) The State of Arkansas.

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

10 (d) The notice shall contain:

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

12 (2) A complete description of the loan;

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

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

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

21
22 13-5-1005. Museum's right to claim ownership of undocumented property.

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

26 (b) This section does not vest ownership of the property in the museum
27 if the undocumented property is determined later to be:

28 (1) Stolen property; or

29 (2) Property whose ownership is subject to federal law.

30
31 13-5-1006. Duties of museum concerning a loan.

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

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

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

35 (B) A description of the loan;

36 (C) The date of the loan; and

1 (D) The expiration date of the loan; and
2 (2) Provide the lender with a signed receipt or copy of the loan
3 agreement containing the information set out in subdivision (a)(1) of this
4 section.
5 (b) The museum's general duties with respect to a loan include:
6 (1) Updating museum records whenever:
7 (A) A lender informs the museum of a change of address or
8 change in the ownership of the loan; and
9 (B) The lender and museum negotiate a change in the terms
10 of the loan;
11 (2) Providing the lender with notice about any update concerning
12 the lender's loan; and
13 (3) Providing copies of §§ 13-5-1004, 13-5-1007, and 13-5-1009:
14 (A) To each lender who made a loan to the museum before
15 the effective date of this subchapter and that loan is in the custody of the
16 museum;
17 (B) To the lender at the time of the loan; and
18 (C) Upon a lender's request.
19
20 13-5-1007. Duties of lender concerning the lender's loan.
21 (a) A lender who has made a loan to a museum shall promptly notify the
22 museum in writing about a change in:
23 (1) The lender's address; and
24 (2)(A) A change in the ownership of the loan.
25 (B)(i) It shall be the responsibility of the owner of a
26 loan to provide sufficient proof of his or her ownership to the museum.
27 (ii) If there is a dispute about ownership, the
28 museum shall not be liable for its good faith refusal to surrender a loan
29 unless ordered by a court of competent jurisdiction.
30 (b) If the museum notifies the lender by certified or registered mail,
31 return receipt requested, that the loan is terminated, the lender shall:
32 (1) Acknowledge in writing the termination and inform the museum
33 whether the lender wants the return of the loan; and
34 (2)(A) Retrieve the loan no later than six (6) months from the
35 date of the museum's notice terminating the loan if the lender wants the loan
36 returned.

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

4
5 13-5-1008. Lien for expenses for care of unclaimed property.

6 A museum has a lien on unclaimed property for any expenses incurred
7 while caring for the unclaimed property.

8
9 13-5-1009. Conservation measures.

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

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

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

21 (2) If the lender or claimant:

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

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

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

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

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

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

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

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

A museum which acquires ownership of property under this subchapter receives 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.

13-5-1013. Rules.

The Department of Parks and Tourism, in consultation with the Department of Arkansas Heritage, shall promulgate rules to carry out the provisions of this subchapter, including, but not limited to, rules concerning the form and substance of loan agreements.

/s/ Mahony