

CHAPTER 97-267

House Bill No. 1199

An act relating to museums; providing legislative intent; providing definitions; providing obligations of museums to lenders; providing for notice to lenders by museums; providing for termination of loans; providing conditions under which a museum gains title to property; providing for conservation or disposal of loaned property by a museum; providing an effective date.

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

Section 1. (1) LEGISLATIVE FINDINGS.—The people of Florida benefit from having property of artistic, historic, cultural, or scientific value loaned to museums in this state. Loans of such property are made to these museums for study or display in furtherance of their educational purposes. However, problems arise in relation to loans for indefinite or long terms when museums and lenders fail to maintain contact. Museums routinely store and care for loaned property long after loan periods have expired or should reasonably be deemed expired. In such circumstances, museums have limited rights to the use and treatment of unclaimed loan property, while at the same time they bear substantial unreimbursed expenses, including, but not limited to, costs related to storage, recordkeeping, climate control, security, periodic inspection, insurance, conservation, and general overhead. The Legislature finds and declares that it is in the public interest to establish uniform procedures governing the disposition of unclaimed property on loan to museums in the state and, more particularly, to encourage museums and their lenders to exercise due diligence in monitoring loans, to allocate fairly responsibilities between lenders and borrowing museums, to establish procedures for lenders to preserve their interests in property loaned to museums for indefinite or long terms, and to resolve expeditiously the title to unclaimed loans left in the custody of museums.

(2) DEFINITIONS.—

(a) “Lender” means an individual, corporation, partnership, trust estate, or other organization or entity whose name appears in the records of the museum as the entity legally entitled to control property on loan to the museum.

(b) “Loans,” “loaned,” or “on loan” refers to property in possession of the museum not accompanied by a transfer of title to the property or accompanied by evidence that the lender intended to retain title to the property and to return to take physical possession of the property in the future.

(c) “Museum” means a public or private not-for-profit agency or institution located in Florida and organized on a permanent basis for primarily educational, scientific, or aesthetic purposes, which owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis.

(d) "Property" means all tangible objects in the custody of a museum which have intrinsic historical, artistic, scientific, or cultural value.

(e) "Records" or "museum records" means documents created or held by a museum in its regular course of business.

(f) "Unclaimed property" means property which is on loan to the museum and in regard to which the lender, or anyone acting legitimately on the lender's behalf, has not contacted the museum for at least 25 years from the date of the beginning of the loan, if the loan was for an indefinite or undetermined period, or for at least 5 years after the date upon which the loan for a definite period expired.

(3) OBLIGATIONS OF MUSEUMS TO LENDERS.—

(a) For property loaned to a museum after the effective date of this act, the museum shall:

1. Make and retain a written record containing, at a minimum, the lender's name, address, and telephone number, a description of the property loaned in sufficient detail for clear identification, including a description of the general condition of the property at the time of the loan, the beginning date of the loan, and the expiration date of the loan.

2. Provide the lender with a signed receipt or loan agreement containing, at a minimum, the record set forth in subparagraph 1.

3. Inform the lender of the existence of the provisions of this act and provide the lender with a copy of the provisions of this act upon the lender's request.

(b) Regardless of the date of a loan of property, the museum shall:

1. Update its records if a lender informs the museum of a change of address or change in ownership of property loaned, or if the lender and museum negotiate a change in the duration of the loan.

2. Inform the lender of the existence of the provisions of this act when renewing or updating the records of an existing loan and provide the lender with a copy of the provisions of this act upon the lender's request.

(c) A museum shall give a lender prompt notice of any known injury to or loss of property on loan.

(4) LENDER'S NOTICE.—

(a) It is the responsibility of the owner of property on loan to a museum to notify the museum promptly in writing of any change in the lender's address or change in ownership of the property. Failure to notify the museum of these changes may result in the owner's loss of rights to the property.

(b) It is the responsibility of a successor of a lender to document passage of rights of control of the property in the custody of a museum.

1. Unless there is evidence of bad faith or gross negligence, no museum shall be prejudiced by reason of any failure to deal with the true owner of any loaned property.

2. In cases of disputed ownership of loaned property, a museum shall not be held liable for its refusal to surrender loaned property in its possession except in reliance upon a court order or judgment.

(5) TERMINATION OF LOANS.—

(a) A museum may terminate a loan for unclaimed property in its possession by making a good faith and reasonable search for the identity and last known address of the lender from the museum records and other records reasonably available to museum staff. If the museum is able to identify the lender and the lender's last known address, the museum shall give notice to the lender that the loan is terminated pursuant to paragraph (b). If the identity or last known address of the lender remains unknown after a good faith and reasonable search, the museum shall give notice by publication pursuant to paragraph (c).

(b) A museum shall provide notice of termination of a loan of unclaimed property by sending a letter by certified mail to the lender at the lender's last known address giving notice of termination of the loan, which shall include the date of notice of termination, the name of the lender, a description of the property sufficient in detail for ready identification, the beginning date of the loan, if known, the termination date of the loan, if applicable, the name and address of the appropriate museum official to be contacted regarding the loan, and a statement that within 90 days of the date of the notice of termination, the lender is required to remove the property from the museum or contact the designated official in the museum to preserve the lender's interests in the property. Failure to provide such notice will result in the loss of all rights in the property pursuant to subsection (6).

(c) If the museum is unable to identify sufficient information to send notice pursuant to paragraph (b), or if a signed return receipt of a notice sent by certified mail pursuant to paragraph (b) is not received by the museum within 30 days after the notice is mailed, the museum shall publish the notice of termination of loan containing all the information available to the museum provided in paragraph (b) at least twice, 60 or more days apart, in a publication of general circulation in the county in which the museum is located and the county of the lender's last known address, if known.

(6) MUSEUM GAINING TITLE TO PROPERTY; CONDITIONS.—As of the effective date of this act, a museum acquires title to unclaimed property under any of the following circumstances:

(a) For property for which a museum provides notice to a lender in accordance with paragraph (5)(b) and a signed receipt is received, if the lender of the property does not contact the museum within 90 days after the date notice was received.

(b) For property for which notice by publication is made pursuant to paragraph (5)(c), if the lender or anyone claiming a legal interest in the

property does not contact the museum within 90 days after the date of the second publication.

(7) CONTRACTUAL OBLIGATIONS.—Notwithstanding the provisions of this act, a lender and museum can bind themselves to different loan provisions by written contract.

(8) EFFECT ON OTHER RIGHTS.—

(a) Property on loan to a museum shall not escheat to the state under any state escheat law but shall pass to the museum under the provisions of subsection (6).

(b) Property interests other than those specifically addressed in this act are not altered by this act.

(9) TITLE OF PROPERTY ACQUIRED FROM A MUSEUM.—A museum which acquires title to property under this act passes good title to another when transferring such property with the intent to pass title.

(10) MUSEUM LIEN FOR EXPENSES OF EXPIRED LOANS.—As of the effective date of this act, a museum shall have a lien for expenses for reasonable care of loaned property unclaimed after the expiration date of the loan.

(11) CONSERVATION OR DISPOSAL OF LOANED PROPERTY.—Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of a loaned property without a lender's permission if:

(a) Immediate action is required to protect the property on loan or to protect other property in the custody of the museum, or because the property on loan has become a hazard to the health and safety of the public or the museum's staff and:

1. The museum is unable to reach the lender at the lender's last address of record, so that the museum and the lender can promptly agree upon a solution; or

2. The lender will not agree to the protective measures the museum recommends yet is unwilling or unable to terminate the loan and retrieve the property.

(b) In the case of a lender who cannot be contacted in person, the museum publishes a notice of its intent to apply conservation measures or dispose of the property on loan in a publication of general circulation in the county in which the museum is located and the county of the lender's last known address, if known, and there is no response for 60 days. Such a notice shall also contain the lender's name, the lender's address, if known, the date of the loan, and the name, address, and telephone number of the appropriate museum office to be contacted for information regarding the property on loan.

(12) If a museum applies conservation measures to or disposes of a property pursuant to subsection (11), the museum shall have a lien on the property and on the proceeds from any disposition thereof for the costs incurred by the museum, and the museum shall not be liable for injury to or loss of the property if:

(a) The museum had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan constituted a hazard to the health and safety of the public or the museum's staff.

(b) The museum exercised reasonable care in the choice and application of conservation measures.

Section 2. This act shall take effect October 1, 1997, except that in the case of property the value of which exceeds \$10,000, this act shall apply only to loans made on or after that date.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.