

1 SB342
2 182172-4
3 By Senators Figures and Orr
4 RFD: Governmental Affairs
5 First Read: 04-APR-17

2
3
4
5
6
7
8 SYNOPSIS: This bill would establish procedures for
9 cultural institutions, defined to include museums,
10 to assume ownership of abandoned loans or
11 undocumented property in possession of the
12 institution.

13 This bill would provide for notice to the
14 owner, if known, and public notification regarding
15 abandoned loans or undocumented property and would
16 provide procedures for an institution to claim
17 title to the property.

18 This bill would also allow a cultural
19 institution to conserve or dispose of loaned or
20 undocumented property under certain conditions and
21 would exclude the Alabama Department of Archives
22 and History and Native American human remains or
23 objects of cultural patrimony from the provisions
24 of the bill.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

2
3 Relating to cultural property; to establish
4 procedures for cultural institutions to assume ownership of
5 abandoned loans or undocumented property in the possession of
6 the institution; to provide for notice to the owner and public
7 notification regarding abandoned loans or property; to provide
8 procedures for claiming title to abandoned property; to allow
9 a cultural institution to conserve or dispose of loaned or
10 undocumented property under certain conditions; to limit
11 actions brought against cultural institutions relating to
12 abandoned loans or undocumented property; and to provide
13 exceptions.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. The purpose of this act shall be the
16 following:

17 (1) To establish procedures for allowing a cultural
18 institution to assume ownership of abandoned loans or
19 undocumented property in the possession of that cultural
20 institution.

21 (2) To allow a cultural institution to conserve or
22 dispose of loaned or undocumented property under certain
23 conditions.

24 Section 2. For the purposes of this act, the
25 following terms shall have the following meanings:

26 (1) CULTURAL INSTITUTION or INSTITUTION. An
27 organized and permanent nonprofit or public institution in

1 this state operated by, or a division of, a nonprofit
2 corporation, trust, association, education institution, or
3 public agency, that is primarily educational, scientific,
4 historic, or aesthetic in purpose, and that owns, borrows,
5 cares for, studies, archives, or exhibits cultural property.
6 The term includes art, history, science and natural history
7 museums, archives, libraries, historical societies, historic
8 sites, and science and technology centers.

9 (2) CULTURAL PROPERTY. Any tangible object in the
10 possession of and under the care of a cultural institution
11 that has intrinsic educational, scientific, historical,
12 artistic, aesthetic, or cultural value.

13 (3) DATE OF CUSTODY. The date of the initial
14 delivery of the cultural property to a cultural institution.

15 (4) LOAN. A deposit of cultural property to a
16 cultural institution that is not accompanied by transfer of
17 title to that property and for which there is some indication
18 that the owner intended to retain title to that property.

19 (5) LENDER. An individual, association, partnership,
20 corporation, trust, estate, or other entity whose name appears
21 on the records of a cultural institution as the person legally
22 entitled to, or claiming to be legally entitled to, property
23 held by that institution or, if such person is deceased, the
24 legal heirs of such person.

25 (6) UNDOCUMENTED PROPERTY. Cultural property in
26 possession of a cultural institution for which that
27 institution cannot determine ownership or intent of placement

1 with the institution by reference to its records and for which
2 that institution has no reasonable means of determining
3 ownership or intent of placement.

4 Section 3. (a) This act does not apply to any of the
5 following:

6 (1) The Alabama Department of Archives and History.

7 (2) Native American human remains or objects of
8 cultural patrimony, which are governed by The Native American
9 Graves Protection and Repatriation Act or the Alabama
10 Antiquities Act of 1908, Section 41-3-1, Code of Alabama 1975.

11 (b) This act does not vest ownership of undocumented
12 property in the cultural institution if the undocumented
13 cultural property is determined later to be stolen property or
14 property whose ownership is subject to federal law.

15 Section 4. (a) If a loan agreement on cultural
16 property on loan to a cultural institution has expired and
17 that institution has notified the lender of the loan's
18 expiration and at least five years have passed with no further
19 contact between that institution and lender, the property is
20 considered abandoned.

21 (b) If a cultural institution has held the abandoned
22 cultural property for at least five years and wishes to gain
23 ownership of this property, the institution shall notify the
24 owner of its intent to claim title to the property by sending
25 a certified letter, return receipt requested, to the owner's
26 last known address on file with the institution.

1 (c) If the institution receives no response to the
2 letter within 30 days, or if the letter is returned
3 undelivered, the institution shall publish notice of intent to
4 claim title with a listing of the cultural property in the
5 following ways:

6 (1) Public notice posted in a conspicuous location
7 at the county courthouse in the county in which the cultural
8 institution is located for a period of at least two weeks.

9 (2) Public notice posted in a conspicuous location
10 at the county courthouse in the county of the lender's last
11 known address on file with the institution for a period of at
12 least two weeks.

13 (3) Publication in one other form of media.

14 (d) The published notice shall contain all of the
15 following:

16 (1) A description of the abandoned property.

17 (2) The name and last known address of the owner.

18 (3) The date of the loan.

19 (4) A statement that if written assertion of title
20 is not presented by the owner to the cultural institution
21 within 90 days from the date of the public notices required in
22 subsection (c), title to the property shall be transferred to
23 the cultural institution, free of all claims of the owner and
24 all persons claiming under the owner.

25 (e) The cultural institution becomes owner of the
26 abandoned loan property on the day after the five-year period

1 ends and after following the notification process outlined in
2 subsections (b) and (c).

3 (f) The lender of cultural property to an
4 institution shall provide that institution with written notice
5 of any change of the lender's address, of the lender's
6 designated agent, of the designated agent's address, and the
7 name and address of the new lender if there is a change in
8 ownership of the cultural property loaned to that institution.
9 If the lender does not provide this updated information, the
10 cultural institution bears no responsibility to search for the
11 lender beyond the last known address in the institution's
12 records.

13 (g) (1) At the time that a lender makes a loan to a
14 cultural institution, that institution shall give the owner
15 notification of this act in writing.

16 (2) Each cultural institution shall keep accurate
17 records of all property on loan to that institution,
18 including the name and address of the lender, if known, and
19 the beginning and ending date of the loan period.

20 (3) Not less than 90 days before a cultural
21 institution changes its address or dissolves, the institution
22 shall notify all lenders of that change of address or
23 dissolution.

24 Section 5. (a) If a cultural institution has held
25 custody of undocumented property for at least five years, the
26 institution may establish its ownership of the property by

1 publishing notice of intent to claim title with a listing of
2 the undocumented property in the following ways:

3 (1) Public notice posted in a conspicuous location
4 at the county courthouse in the county in which the cultural
5 institution is located for a period of at least two weeks.

6 (2) Publication in one other form of media.

7 (b) The published notice shall contain all of the
8 following:

9 (1) A description of the undocumented property.

10 (2) A statement that if written assertion of title
11 is not presented by the owner to the cultural institution
12 within 90 days from the date of the public notices required in
13 subsection (a), title to the property shall belong to the
14 institution, free of all claims of the owner and all persons
15 claiming under the owner.

16 (c) The cultural institution becomes owner of the
17 abandoned loan property on the day after the five-year period
18 ends and after following the notification process outlined in
19 subsections (a) and (b).

20 Section 6. (a) If a cultural institution receives a
21 written claim of ownership for any cultural property for which
22 intent to claim title was made, pursuant to Section 4, from
23 the lender on record with that institution, or the designated
24 agent of such lender, the institution shall return the
25 property to the lender or carry out the disposition of such
26 property as the lender requests not later than 90 days after
27 receipt of such written claim of ownership, provided the

1 lender shall advise the institution in writing as to the
2 disposition of such property or how such property is to be
3 returned to the lender. Any costs incurred as a result of
4 returning such property or the disposition of such property
5 shall be the responsibility of the lender unless the lender
6 and the institution have mutually agreed to alternate
7 arrangements.

8 (b) (1) If a cultural institution receives a written
9 claim of ownership for any property for which notice of intent
10 to claim title was made, pursuant to Section 4 or 5, from a
11 person other than the lender on record with the institution,
12 the cultural institution shall, not later than 90 days after
13 receipt of such written claim of ownership, determine if such
14 ownership claim is valid.

15 (2) A claimant shall submit proof of ownership to
16 the institution with such written claim of ownership. If more
17 than one person submits a written claim of ownership, the
18 institution may delay its determination of ownership until the
19 competing claims are resolved by agreement or legal action.

20 (3) A cultural institution is not obligated to
21 initiate legal action to resolve competing claims. If the
22 cultural institution determines that the written claim of
23 ownership is valid or if the competing claims are resolved by
24 agreement or judicial action, the institution shall return the
25 property to the claimant submitting the valid claim of
26 ownership or dispose of the property as the valid claimant
27 requests.

1 (4) Any costs incurred as a result of returning the
2 property or the disposition of the property shall be the
3 responsibility of the valid claimant unless the valid claimant
4 and the institution have mutually agreed to alternate
5 arrangements.

6 Section 7. If newly received, but undocumented,
7 property is found on a site controlled by a cultural
8 institution, is from an unknown source, and might reasonably
9 be considered a gift to that institution and if ownership of
10 that property is not claimed and satisfactorily demonstrated
11 by the owner within 90 days of its discovery, that cultural
12 institution may claim title to the property with no further
13 action or dispose of the property without taking ownership.

14 Section 8. (a) Unless there is a written stipulation
15 in the loan agreement to the contrary, the cultural
16 institution may apply conservation measures to or dispose of
17 cultural property on loan to the cultural institution without
18 formal notice or the owner's permission if immediate action is
19 required to protect the cultural property on loan or other
20 property in the cultural institution's custody, or if the
21 cultural property on loan is a health or safety hazard for the
22 public or staff, and either of the following circumstances
23 occur:

24 (1) The cultural institution is unable to reach the
25 owner at the owner's last known address so that the cultural
26 institution and the owner may promptly agree on a solution.

1 (2) The owner will not agree to the protective
2 measures the cultural institution recommends, yet is unwilling
3 to terminate the loan and retrieve the property promptly.

4 (b) A cultural institution is not liable for injury
5 to, or loss of, loaned cultural property if either of the
6 following occur:

7 (1) The cultural institution had a reasonable belief
8 at the time of action that the action was necessary to protect
9 the property on loan or other property in the custody of the
10 institution, or that the property on loan constituted a hazard
11 to the health and safety of the public or the cultural
12 institution staff.

13 (2) When the cultural institution applied
14 conservation measures, the institution exercised reasonable
15 care in the choice and application of the conservation
16 measures.

17 Section 9. (a) A cultural institution that acquires
18 ownership of cultural property under this act receives the
19 property free of any claim by a claimant or owner.

20 (b) Any person or institution which purchases or
21 otherwise receives transfer of property from a cultural
22 institution acquires good title to the property if the
23 institution represents that it has acquired title to the
24 property pursuant to Section 4, 5, or 6.

25 (c) Except as may be otherwise provided in a written
26 agreement between an owner and a cultural institution, no
27 action shall be brought against an institution to recover

1 loaned cultural property when more than five years have passed
2 from the receipt by the institution of written communication
3 concerning the loaned property or any display of interest in
4 the property by the owner as evidenced by a memorandum or
5 other record on file prepared by an employee of the
6 institution.

7 (d) Abandoned cultural property may not be delivered
8 to the State Treasurer, Unclaimed Property Division and shall
9 be exempt from the provisions of the Uniform Disposition of
10 Unclaimed Property Act of 2004, Title 35, Code of Alabama
11 1975, but title shall pass to the cultural institution if no
12 person takes action required under this act.

13 Section 10. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.