STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 895 BY: HANEY of the SENATE

and

FALLIN of the HOUSE

COMMITTEE SUBSTITUTEAN ACT RELATING TO MUSEUM PROPERTY; CREATING THE MUSEUM PROPERTY ACT; PROVIDING SHORT TITLE; DEFINING TERMS; PROVIDING FOR CERTAIN INFORMATION TO BE INCLUDED IN CERTAIN NOTICES; STATING PROCEDURES FOR MAILING CERTAIN NOTICES; REQUIRING CERTAIN NOTICE TO BE PUBLISHED IN CERTAIN NEWSPAPERS; AUTHORIZING MUSEUM TO CONTROL CERTAIN PROPERTY WITHOUT PERMISSION UNDER CERTAIN CIRCUMSTANCES; STATING MUSEUM HAS A LIEN ON CERTAIN PROPERTY UNDER CERTAIN CIRCUMSTANCES; PROVIDING PROCEDURES FOR MUSEUM TO ACQUIRE TITLE TO LOANED PROPERTY; AUTHORIZING MUSEUM TO ACQUIRE TITLE TO CERTAIN PROPERTY AFTER CERTAIN TIME PERIOD AND AFTER CERTAIN NOTICE; PROVIDING PROCEDURES FOR MUSEUM TO PRESERVE AN INTEREST IN CERTAIN PROPERTY; STATING LIMITATIONS ON CERTAIN LEGAL ACTIONS BROUGHT AGAINST MUSEUMS UNDER CERTAIN CIRCUMSTANCES; STATING CERTAIN PROPERTY SHALL BE DEEMED DONATED TO MUSEUM IF LENDER FAILS TO TAKE CERTAIN LEGAL ACTION WITHIN CERTAIN TIME PERIOD; STATING EXCEPTION; STATING MUSEUM SHALL NOT BE LIABLE FOR RETURNING PROPERTY TO LENDER; STATING EXCEPTION; PROVIDING FOR NOTIFICATION OF TRIBAL GOVERNMENTS IN CERTAIN CIRCUMSTANCES; PROVIDING PROCEDURES FOR MUSEUM TO TAKE TITLE TO PROPERTY; REQUIRING MUSEUM TO MAKE CERTAIN NOTIFICATION TO LENDERS AFTER CERTAIN DATE; REQUIRING MUSEUM TO MAINTAIN AND RETAIN CERTAIN RECORDS; REQUIRING LENDER TO PROVIDE MUSEUM WITH CERTAIN

INFORMATION; AUTHORIZING THE LENDER TO FILE A NOTICE OF INTENT TO PRESERVE AN INTEREST IN PROPERTY; PROVIDING FOR CERTAIN LOANED PROPERTY TO BECOME PROPERTY OF MUSEUM AFTER DEATH OF OWNER; STATING CERTAIN PROVISIONS SHALL BE RETROACTIVELY APPLICABLE TO CERTAIN PROPERTY; PROVIDING FOR CODIFICATION; PROVIDING EFFECTIVE DATES; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8101 of Title 74, unless there is created a duplication in numbering, reads as follows:

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8102 of Title 74, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Claimant" means a person who files a notice of intent to preserve an interest in property on loan to a museum as provided in Section 8 of this act;

2. "Claimant's address" means the most recent address as shown on a notice of intent to preserve an interest in property on loan to a museum, or notice of change of address, which notice is on file with the museum;

3. "Lender" means a person whose name appears on the records of the museum as the person legally entitled to property held or owing by the museum;

4. "Lender's address" means the most recent address as shown on the museum's records pertaining to the property on loan from the lender;

5. "Loan" means a deposit of property not accompanied by a transfer of title to the property;

6. "Indefinite loan" means any loan not evidenced by a written statement of the terms of the loan signed by the lender;

7. "Museum" means an institution which is located in this state and operated by a nonprofit corporation or a public agency primarily for educational, scientific, historic preservation or aesthetic purposes, and which owns, borrows, cares for, exhibits, studies, archives or catalogues property. Museum includes, but is not limited to, historical societies, historic sites or landmarks, parks, monuments and libraries;

8. "Property" means a tangible object, animate or inanimate, under a museum's care which has intrinsic, historic, artistic, scientific or cultural value;

9. "Restricted certified mail" means certified mail which carries on its face, in a conspicuous place where it will not be obliterated, the endorsement "deliver to addressee only" and for which the post office provides the mailer with a return receipt showing the date of delivery, the place of delivery and person to whom delivered; and

10. "Undocumented property" means property in the possession of a museum for which the museum cannot determine, by reference to the museum's records, the property's owner.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8103 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other information prescribed for a particular notice, all notices given pursuant to this act shall contain the following information:

1. The lender's name, or the claimant's name, as appropriate;

2. The lender's last-known address, or the claimant's last-known address, as appropriate;

3. A brief description of the property on loan;

4. The date of the loan, if known;

5. The name of the museum; and

6. The name, address and telephone number of the appropriate person or office to be contacted regarding the property.

B. All notices given by a museum pursuant to this act shall be mailed to the lender's, and any claimant's, last-known address by restricted certified mail. Notice is deemed given if the museum receives proof of receipt within thirty (30) days after mailing the notice.

C. If the museum does not know the identity of the lender, or does not have an address or telephone number for the lender, or if proof of receipt is not received by the museum within thirty (30) days after mailing a notice under subsection B of this section, notice is deemed given if the museum publishes notice at least once a week for three (3) consecutive weeks in a newspaper or newspapers having circulation in both the county where the museum is located and the county of the lender's or claimant's address, if any, and having the qualifications to publish legal notices.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8104 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of property on loan to the museum without the lender's or claimant's permission, or formal notice, if:

1. Immediate action is required to protect the property on loan or other property in the custody of the museum or the property on loan is a hazard to the health and safety of the public or the museum staff; and

2. Any of the following apply:

a. the museum is unable to reach the lender or claimant at the lender's or claimant's last-known address or telephone number, if action is to be taken within more than three (3) days but less than one (1) week from the time the museum determined action was necessary,

b. the museum is unable to reach the lender or claimant at the lender's or claimant's last-known telephone number prior to taking action, if the action is to be taken within three (3) days or less from the time the museum determined action was necessary, or

c. the lender or claimant does not respond or will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

B. If a museum applies conservation measures to or disposes of property under this section, or with the agreement of the lender and claimants unless the agreement provides otherwise, the museum:

1. Has a lien on the property and on the proceeds of any disposition of the property for the costs incurred by the museum; and

2. Is not liable for injury to or loss of the property if the museum:

a. 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 was a hazard to the health and safety of the public or the museum staff, and

b. exercised reasonable care in the choice and application of conservation measures.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8105 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. A museum may acquire title to loaned property pursuant to the provisions of this section. A museum may give notice of termination of a loan of property at any time if either of the following apply:

1. The property was loaned to the museum for an indefinite term; or

2. The property was loaned to the museum for a specified term, and that term has expired.

B. If the lender or claimant does not respond to the notice of termination provided under subsection A of this section within ninety (90) days by filing a notice of intent to preserve an interest in property on loan, the museum acquires title to the property.

C. A notice of intent to terminate a loan must include a statement containing the following information:

"The records of (name of museum) indicate that you have property on loan to it. The institution wishes to terminate the loan. You must contact the institution, establish your ownership of the property pursuant to the provisions of the Museum Property Act and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have donated the property to the institution."

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8106 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. A museum may acquire title to undocumented property it has held for seven (7) years or longer with no valid claim or written contact by any person, all verifiable through the museum's written

records, by giving notice of acquisition of title to undocumented property.

B. If a lender or claimant does not respond to the notice provided in subsection A of this section within one (1) year by filing a notice of intent to retain an interest in property on loan, the museum's title to the property becomes uncontestable under Section 8 of this act.

C. A notice of acquisition of title must include a statement containing the following information:

"The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum intends to acquire title to the following property: (general description of property). If you claim ownership or other legal interest in this property you must contact the institution, establish your ownership of the property pursuant to the provisions of the Museum Property Act and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have waived any claim you may have had to the property."

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8107 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. A notice of intent to preserve an interest in property on loan to a museum filed pursuant to this act shall be in writing and contain the following information:

1. A description of the property adequate to enable the museum to identify the property;

2. Documentation sufficient to establish the claimant as owner of the property;

3. A statement attesting to the truth, to the best of the signer's knowledge, of all information included in or with the notice; and

4. The signature, under penalty of perjury, of the claimant or a person authorized to act on behalf of the claimant.

B. The museum need not retain a notice which does not meet the requirements set forth in subsection A of this section. If, however, the museum does not intend to retain a notice for this reason, the museum shall promptly notify the claimant at the address given on the notice that the museum believes the notice is ineffective to preserve an interest, and the reasons for the insufficiency. The fact that the museum retains a notice under Section 11 of this act does not mean that the museum accepts the sufficiency or accuracy of the notice or that the notice is effective to preserve an interest in property on loan to the museum.

C. A museum shall provide a form for notice of intent to preserve an interest in property on loan to the museum. The form shall satisfy the requirements of subsection A of this section and shall notify the claimant of the rights and procedures to preserve an interest in museum property. The form shall also facilitate recordkeeping and record retrieval by a museum. At a minimum, the form shall provide a place for recording evidence of receipt of a notice by the museum, including the date of receipt, signature of the person receiving the notice and the date on which a copy of the receipt is returned to the claimant.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8108 of Title 74, unless there is created a duplication in numbering, reads as follows:

On and after July 1, 1992:

1. An action shall not be brought against a museum for damages because of injury to or loss of property loaned to the museum more than three (3) years from the date the museum gives the lender or claimant notice of the injury or loss or ten (10) years from the date of the injury or loss, whichever occurs earlier;

2. An action shall not be brought against a museum to recover property on loan more than one (1) year from the date the museum gives the lender or claimant notice of its intent to terminate the loan or notice of acquisition of title to undocumented property;

3. An action shall not be brought against a museum to recover property on loan more than seven (7) years from the date of the last written contact between the lender or claimant and the museum as evidenced by the museum's records;

4. A lender or claimant is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the periods specified in paragraphs 1 through 3 of this section;

5. Notwithstanding paragraphs 3 and 4 of this section, a lender or claimant who was not given notice as provided in this act that the museum intended to terminate a loan, as provided in Section 6 of this act, and who proves that the museum received an adequate notice of intent to preserve an interest in loaned property, which satisfies all of the requirements of Section 7 of this act within three (3) years immediately preceding the filing of an action to recover the property, may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at the legal rate;

6. A museum is not liable at any time, in the absence of a court order, for returning property to the original lender, even if a claimant other than the lender has filed a notice of intent to preserve an interest in property. If persons claim competing interests in property in the possession of a museum, the burden is upon the claimants to prove their interests in an action in equity initiated by a claimant. A museum is not liable at any time for returning property to an uncontested claimant who produced reasonable proof of ownership pursuant to Section 7 of this act. In the case 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; and

7. Any museum that utilizes the provisions of the Museum Property Act to acquire title to any Native American item(s) must contact the appropriate tribal government(s) prior to taking any action to sell, trade or otherwise dispose of the item(s). Notwithstanding the provisions of this paragraph, consent of any tribal government shall not be required prior to the disposition of any such item.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8109 of Title 74, unless there is created a duplication in numbering, reads as follows:

In order to take title pursuant to this act, a museum has the following obligations to a lender or claimant:

1. The museum shall retain all written records regarding the property for at least three (3) years from the date of taking title pursuant to the provisions of this act;

2. The museum shall keep written records on all loaned property acquired pursuant to Section 5 of this act. Records shall contain the following information:

a. the lender's name, address and telephone number,

b. the claimants's name, address and telephone number,

c. the nature and terms of the loan, and

d. the beginning date of the loan period, if known;

3. A museum accepting a loan of property on or after July 1, 1992, shall inform the lender in writing at the time of the loan of the provisions of this act. A copy of the form notice prescribed in Section 7 of this act or a citation to this act, is adequate for this purpose; and

4. The museum is responsible for notifying a lender or claimant of the museum's change of address or dissolution.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8110 of Title 74, unless there is created a duplication in numbering, reads as follows:

On or after July 1, 1992, a museum shall at a minimum maintain and retain the following records, either originals or accurate copies, for a period of not less than twenty-five (25) years:

1. A notice of intent to preserve an interest in property;

2. The loan agreement, if any;

3. A receipt or ledger for property delivered to an owner or claimant; and

4. Records containing the following information, as available, for property in the museum's possession:

a. the lender's name, address and telephone number,

b. the claimant's name, address and telephone number,

c. the donor's name, address and telephone number,

d. the seller's name, address and telephone number,

e. the nature and terms of the transaction, and

f. the beginning date of the loan period or transaction date.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8111 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The lender or claimant of property on loan to a museum shall notify the museum of a change of address or change in ownership of the property. Failure to notify the museum of these changes may result in the lender's or claimant's loss of rights in the property.

B. The lender or claimant of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property as provided for in Section 7 of this act. The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim which would

be extinguished under the terms of a written agreement, or which would otherwise be invalid or unenforceable.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8112 of Title 74, unless there is created a duplication in numbering, reads as follows:

Loaned property in the possession of a museum at the time of the owner's death which would otherwise escheat to the state shall not so escheat but shall become the property of the museum to which it is then loaned.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8113 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Sections 2 through 7 of this act are retroactively applicable to all property in the possession of a museum within the State of Oklahoma on or after January 1, 1989.

B. Section 9 of this act shall become effective July 1, 1992, and when effective is retroactively applicable to all property in the possession of a museum before July 1, 1992, and is prospectively applicable to all property in the possession of the museum on or after July 1, 1992, for which a claim is filed on or after July 1, 1992.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-8669 SD