SB342

182172-4

By Senators Figures and Orr

RFD: Governmental Affairs

First Read: 04-APR-17
SYNOPSIS: This bill would establish procedures for cultural institutions, defined to include museums, to assume ownership of abandoned loans or undocumented property in possession of the institution.

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

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

A BILL

TO BE ENTITLED
AN ACT

Relating to cultural property; to establish procedures for cultural institutions to assume ownership of abandoned loans or undocumented property in the possession of the institution; to provide for notice to the owner and public notification regarding abandoned loans or property; to provide procedures for claiming title to abandoned property; to allow a cultural institution to conserve or dispose of loaned or undocumented property under certain conditions; to limit actions brought against cultural institutions relating to abandoned loans or undocumented property; and to provide exceptions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

(1) CULTURAL INSTITUTION or INSTITUTION. An organized and permanent nonprofit or public institution in
this state operated by, or a division of, a nonprofit
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corporation, trust, association, education institution, or
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public agency, that is primarily educational, scientific,
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historic, or aesthetic in purpose, and that owns, borrows,
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cares for, studies, archives, or exhibits cultural property.
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The term includes art, history, science and natural history
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museums, archives, libraries, historical societies, historic
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sites, and science and technology centers.
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(2) CULTURAL PROPERTY. Any tangible object in the
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possession of and under the care of a cultural institution
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that has intrinsic educational, scientific, historical,
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artistic, aesthetic, or cultural value.
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(3) DATE OF CUSTODY. The date of the initial
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delivery of the cultural property to a cultural institution.
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(4) LOAN. A deposit of cultural property to a
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 cultural institution that is not accompanied by transfer of
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title to that property and for which there is some indication
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that the owner intended to retain title to that property.
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(5) LENDER. An individual, association, partnership,
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corporation, trust, estate, or other entity whose name appears
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on the records of a cultural institution as the person legally
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entitled to, or claiming to be legally entitled to, property
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held by that institution or, if such person is deceased, the
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legal heirs of such person.
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(6) UNDOCUMENTED PROPERTY. Cultural property in
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possession of a cultural institution for which that
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institution cannot determine ownership or intent of placement

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

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

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

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

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

(b) If a cultural institution has held the abandoned
cultural property for at least five years and wishes to gain
ownership of this property, the institution shall notify the
owner of its intent to claim title to the property by sending
a certified letter, return receipt requested, to the owner's
last known address on file with the institution.
(c) If the institution receives no response to the letter within 30 days, or if the letter is returned undelivered, the institution shall publish notice of intent to claim title with a listing of the cultural property in the following ways:

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

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

(3) Publication in one other form of media.

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

(1) A description of the abandoned property.

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

(3) The date of the loan.

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

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

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

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

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

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

Section 5. (a) If a cultural institution has held custody of undocumented property for at least five years, the institution may establish its ownership of the property by
publishing notice of intent to claim title with a listing of the undocumented property in the following ways:

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

(2) Publication in one other form of media.

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

(1) A description of the undocumented property.

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

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

Section 6. (a) If a cultural institution receives a written claim of ownership for any cultural property for which intent to claim title was made, pursuant to Section 4, from the lender on record with that institution, or the designated agent of such lender, the institution shall return the property to the lender or carry out the disposition of such property as the lender requests not later than 90 days after receipt of such written claim of ownership, provided the
lender shall advise the institution in writing as to the
disposition of such property or how such property is to be
returned to the lender. Any costs incurred as a result of
returning such property or the disposition of such property
shall be the responsibility of the lender unless the lender
and the institution have mutually agreed to alternate
arrangements.

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

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

(3) A cultural institution is not obligated to
initiate legal action to resolve competing claims. If the
cultural institution determines that the written claim of
ownership is valid or if the competing claims are resolved by
agreement or judicial action, the institution shall return the
property to the claimant submitting the valid claim of
ownership or dispose of the property as the valid claimant
requests.
(4) Any costs incurred as a result of returning the
property or the disposition of the property shall be the
responsibility of the valid claimant unless the valid claimant
and the institution have mutually agreed to alternate
arrangements.

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

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

(1) The cultural institution is unable to reach the
owner at the owner's last known address so that the cultural
institution and the owner may promptly agree on a solution.
(2) The owner will not agree to the protective measures the cultural institution recommends, yet is unwilling to terminate the loan and retrieve the property promptly.

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

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

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

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

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

(c) Except as may be otherwise provided in a written agreement between an owner and a cultural institution, no action shall be brought against an institution to recover
loaned cultural property when more than five years have passed
from the receipt by the institution of written communication
concerning the loaned property or any display of interest in
the property by the owner as evidenced by a memorandum or
other record on file prepared by an employee of the
institution.

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

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