

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5165

By Delegates Summers and Tully

[Introduced January 25, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §36-8B-1, §36-8B-2, §36-8B-3, §36-8B-4, §36-8B-5, §36-8B-6, §36-8B-7, and
 3 §36-8B-8, all relating to authorizing museums to claim title to certain property in
 4 possession of the museum after providing certain notices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. ABANDONED PROPERTY IN POSSESSION OF A MUSEUM.

§36-8B-1. Definitions.

1 The following words and terms are defined:

2 "Address of the Lender" means the most recent address of a lender as shown on the
 3 museum's records pertaining to property on loan from the lender.

4 "Conservation Measure" means any action taken toward the long-term preservation of
 5 property and includes examination, documentation, treatment, and preventive care of property,
 6 supported by research and education.

7 "Lender" means a person whose name appears on the records of a museum as the person
 8 legally entitled to, or claiming to be legally entitled to, property held by the museum.

9 "Loan" means a deposit of property not accompanied by a transfer of title to that property.

10 "Museum" means an institution located in the state that: (1) is operated by a person
 11 primarily for education, scientific, historic preservation, or aesthetic purposes; and (2) owns,
 12 borrow, cares for, exhibits, studies, archives, or catalogs property.

13 "Permanent Loan" means a loan of property to a museum for an indefinite period.

14 "Property" means a tangible object under a museum's care that has intrinsic historic,
 15 artistic, scientific, or cultural value.

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

18 "Unsolicited Donation" means any property that is left in the control of a museum that is
 19 from an unknown source and can be reasonably assumed to have been intended as a gift to the

20 museum.

§36-8B-2. Property on Permanent Loan.

1 (a) (1) A museum may acquire title to property that is on permanent loan to the museum or
2 that was loaned for a specified term that has expired by giving notice that the museum is
3 terminating the loan of the property.

4 (2) In addition to the information required under article, the notice required under this
5 section shall contain the following statement: "The records at (name of museum) indicate that you
6 have property on loan to it. The museum terminates the loan. If you desire to claim the property,
7 you shall contact the museum, establish your ownership of the property, and make arrangements
8 to collect the property. If you do not contact the museum within 60 days, you will be considered to
9 have donated the property to the museum".

10 (3) If, within 60 days after receiving the notice, the lender does not respond by filing a
11 notice of intent to preserve an interest in the property on loan, clear and unrestricted title is
12 transferred to the museum.

13 (b) If a loan of property to a museum is not a permanent loan and does not have a specific
14 expiration date, the property is presumed abandoned if, for at least seven years after the date the
15 museum took possession of the property, there has not been any written communication between
16 the museum and the lender or lender's designated agent.

§36-8B-3. Undocumented Property.

1 (a) A museum may acquire title to undocumented property held by the museum for at least
2 three years by giving notice that the museum is asserting title to the undocumented property.

3 (b) In addition to the information required under this article, the notice required under this
4 section shall contain the following statement: "the records of (name of museum) fail to indicate the
5 owner of record of certain property in its possession. The museum hereby asserts title to the
6 following property: (general description of property). If you claim ownership or other legal interest
7 in this property, you shall contact the museum, establish ownership of the property, and make

8 arrangements to collect the property. If you fail to do so within 60 days, you will be considered to
9 have waived any claim you may have had to the property".

10 (c) If, within 60 days after notice is provided, the lender does not respond by giving written
11 notice of intent to retain an interest in the property on loan, the museum's title to the property
12 becomes _____ absolute.

§36-8B-4. Unsolicited Donations.

1 (a) (1) A museum may acquire title to an unsolicited donation found on museum property
2 by giving notice that the museum is asserting title to the unsolicited donation.

3 (2) In addition to the information required under this article, the notice required under
4 section shall contain the following statement: "The following property was found at (name of
5 museum) and is presumed to be a donation to the museum. The museum hereby asserts title to
6 the following property: (general description of property). Anyone claiming ownership or other legal
7 interest in this property must contact the museum, establish ownership of the property, and make
8 arrangements to collect the property. If you fail to do so within 60 days of this notice you will have
9 waived any claim to this property".

10 (3) An unsolicited donation is presumed to be a gift to the museum if ownership is not
11 claimed within 60 days after the notice required under this section.

12 (b) Undocumented property found in the collection of a museum is not an unsolicited
13 donation _____ and _____ is _____ subject _____ to _____ §36-8B-3.

§36-8B-5. Conservation Measures.

1 (a) Unless there is an agreement otherwise between the museum and the lender, a
2 museum may apply conservation measures to property on loan to the museum without receiving
3 the lender's permission or giving the lender formal notice if: (1) action is required to protect the
4 property on loan or other property in the custody of the museum; or (2) the property on loan is a
5 hazard to the health and safety of the public or the museum staff.

6 (b) If a museum applies conservation measures to property under this section or with the

7 agreement of the lender, unless the agreement provides otherwise, the museum: (1) acquires a
8 lien on the property in the amount of the cost of the conservation measures incurred by the
9 museum; and (2) is not liable for injury to or loss of the property if the museum: (A) had a
10 reasonable belief at the time the conservation measure action was taken that the action was
11 necessary to protect the property on loan or other property in the custody of the museum, or that
12 the property on loan was a hazard to the health and safety of the public or the museum staff; and
13 (B) exercised reasonable care in the choice and application of conservation measures.

§36-8B-6. Notice by Certified Mail.

1 (a) (1) Except as provided in §36-8B-7 of this code, a museum shall provide the notice
2 required under this subtitle by certified mail to the last known address of the lender.

3 (2) The notice requirement is satisfied if the museum receives proof of receipt of the notice
4 within 30 days after the notice was mailed.

5 (b) A lender shall provide written notice to the museum of a change in address of: (1) the
6 lender; or (2) any designated agent of the lender.

7 (c) If the ownership of property on loan to a museum changes while the museum is in
8 possession of the property, the new owner of the property shall provide written notice to the
9 museum of: (1) the change of ownership of the property; and (2) the name and address of the new
10 owner.

§36-8B-7. Notice by Publication.

1 (a) A museum may provide the notice required under this subtitle by publication if the
2 museum does not: (1) know the identity of the lender or a designated agent of the lender; (2) know
3 the address of the lender or a designated agent of the lender; or (3) receive proof of receipt of a
4 notice that was sent by certified mail within 30 days after the notice was mailed.

5 (b) A notice by publication shall be published at least once a week for two consecutive
6 weeks in a newspaper of general circulation in: (1) the county in which the museum is located; and
7 (2) if the identity of the lender is known, the county of the lender's last known address.

§36-8B-8. Information Required in a Notice.

1 In addition to any other information required under this article, any notice given by a
2 museum under this subtitle shall contain: (1) if known, the name of the lender or the designated
3 agent of the lender; (2) if known, the last known address of the lender or the designated agent of
4 the lender; (3) a brief description of the property on loan; (4) if known, the date of the loan; (5) the
5 name of the museum; and (6) the name, address, and telephone number of the person or office at
6 the museum to contact regarding the property.

NOTE: The purpose of this bill is to authorize museums to claim title to certain property in possession of the museum after providing certain notices.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.