

SECOND REGULAR SESSION

HOUSE BILL NO. 2366

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HARRIS.

5789H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 184.116, 184.119, 184.122, 184.384, 407.010, and 407.453, RSMo, and section 407.020 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 407.020 as enacted by senate bill no. 788, ninety-fourth general assembly, second regular session, and to enact in lieu thereof eight new sections relating to museums, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 184.116, 184.119, 184.122, 184.384, 407.010, and 407.453, RSMo, and section 407.020 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 407.020 as enacted by senate bill no. 788, ninety-fourth general assembly, second regular session, are repealed and eight new sections enacted in lieu thereof, to be known as sections 29.215, 184.116, 184.119, 184.122, 184.384, 407.010, 407.020, and 407.453, to read as follows:

29.215. 1. Notwithstanding any provision of law to the contrary, the state auditor shall have the power to audit any museum established under sections 184.350 to 184.880 in the same manner as the state auditor may audit any agency of the state.

2. When the state auditor deems it necessary, proper, or expedient, it shall be the duty of the state auditor to audit any museum district, subdistrict, and commission established under sections 184.350 to 184.880. Salaries of auditors, examiners, and other employees of the state auditor making such audit and all expenses incurred shall be paid by such district, subdistrict, and commission with all moneys received to be deposited in the state treasury and credited to the "Petition Audit Revolving Trust Fund".

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

184.116. 1. **A lender or claimant may bring a civil action for damages for property injured or lost while on loan to a museum. Any party to an action initiated under this section may demand a trial by jury. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the lender or claimant actual and punitive damages, and may award court costs and reasonable attorney fees to the prevailing lender or claimant.**

2. No action for damages shall be brought against a museum because of injury to or loss of property on loan to the museum more than two years from the date the museum gives the lender or claimant notice of the injury or loss or five years from the date [of] **that** the injury or loss **is capable of being ascertained by the lender or claimant**, whichever occurs earlier.

[2.] 3. No action to recover property on loan shall be brought against a museum more than one year from the date the museum gives the lender or claimant notice of intent to terminate the loan or notice of acquisition of title to undocumented property, or more than five years from the date a notice of intent to preserve an interest in the property was filed with the museum by the lender or claimant, whichever occurs earlier.

[3.] 4. A lender or claimant is considered to have donated loaned property to the museum if the lender or claimant fails to file an action to recover the property on loan to the museum within the periods specified in subsections [1] 2 and [2] 3 of this section.

[4.] 5. A person who purchases property from a museum acquires good and valid title to the property if the museum represents to the person that it has acquired title to the property pursuant to sections 184.101 to 184.122.

[5.] 6. Notwithstanding subsections 3 and 4 of this section, a lender or claimant who was not given notice of intent to terminate a loan or notice of acquisition of title as provided in sections 184.111 and 184.112, respectively, and who proves that the museum received from the lender or claimant an adequate notice of intent to preserve an interest in loaned property, which satisfies all of the requirements of section 184.114, within the seven years immediately preceding the filing of an action to recover the property, may bring an action to 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 custody of a museum, the burden is upon the claimants to prove their interest 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 184.114.]

36 7. [This section shall become effective July 1, 1992.] **The provisions of this section**
37 **shall not preempt or limit any other rights of action in law or equity that a lender or**
38 **claimant may have against a museum.**

184.119. 1. On or after December 31, 1991, a museum shall, at a minimum, maintain
2 and retain the following records, either originals or accurate copies, **for each item in its**
3 **possession or collection for as long as such item is in the possession of the museum and for**
4 a period of not less than twenty-five years **thereafter:**

5 (1) **All documentation related to the accession and origin of the item;**

6 (2) A notice of intent to preserve an interest in property provided pursuant to section
7 184.114;

8 [(2)] (3) The loan agreement, if any, and a receipt or ledger for property on loan to the
9 museum;

10 [(3)] (4) A receipt or ledger for property delivered by the museum to lender or claimant;

11 [(4)] (5) Records containing the following information, as available, for property in the
12 custody of the museum:

13 (a) The lender's name, address, and telephone number;

14 (b) The claimant's name, address, and telephone number;

15 (c) The donor's name, address, and telephone number;

16 (d) The seller's name, address, and telephone number;

17 (e) The nature and terms of the transaction;

18 (f) The beginning date of the loan period, the transaction date, or the date of acquisition
19 of the property.

20 2. The director may by rule determine the minimum form and substance of record
21 keeping by museums with regard to museum property to implement sections 184.101 to 184.122.

22 **3. The museum shall maintain a directory of the items in its possession and the**
23 **items set forth in subsection 1 of this section that are accessible to the general public during**
24 **regular business hours.**

184.122. The provisions of sections 184.101 to 184.122, to the extent applicable, shall
2 supersede the provisions of the lost and unclaimed property act, sections 447.010 to 447.595, **but**
3 **shall not otherwise preempt or limit any other rights of action in law or equity that a lender**
4 **or claimant may have against a museum.**

184.384. The district and subdistricts and the officers and employees thereof shall be
2 subject to the provisions of chapter [296] 213 or any amendment thereto hereafter enacted.

407.010. As used in sections 407.010 to 407.130, the following words and terms mean:

2 (1) "Advertisement", the attempt by publication, dissemination, solicitation, circulation,
3 or any other means to induce, directly or indirectly, any person to enter into **or modify** any

4 obligation or acquire any title or interest in any merchandise, **whether on a permanent or**
5 **temporary basis;**

6 (2) "Documentary material", the original or a copy of any book, record, report,
7 memorandum, paper, communication, tabulation, map, chart, photograph, mechanical
8 transcription, or other tangible document or recording, wherever situated;

9 (3) "Examination of documentary material", the inspection, study, or copying of such
10 material, and the taking of testimony under oath or acknowledgment in respect to any
11 documentary material or copy thereof;

12 (4) "Merchandise", any objects, **property, loans**, wares, goods, commodities,
13 intangibles, real estate or services;

14 (5) "Person", any natural person or his legal representative, partnership, firm, for-profit
15 or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business
16 entity or association, and any agent, employee, salesman, partner, officer, director, member,
17 stockholder, associate, trustee or cestui que trust thereof;

18 (6) "Sale", any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise
19 for cash or on credit, **or the modification or transfer of a prior sale or lease;**

20 (7) "Trade" or "commerce", the advertising, offering for sale, sale, or distribution, or any
21 combination thereof, of any services and any property, tangible or intangible, real, personal, or
22 mixed, and any other article, commodity, or thing of value wherever situated. The terms "trade"
23 and "commerce" include any trade or commerce directly or indirectly affecting the people of this
24 state.

407.020. 1. The act, use or employment by any person of any deception, fraud, false
2 pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or
3 omission of any material fact in connection with the sale or advertisement of any merchandise
4 in trade or commerce or the solicitation of any funds, **property, financial assistance or other**
5 **thing of value, including the promise or grant of any moneys or property of any kind or**
6 **value**, for any charitable purpose, as defined in section 407.453, in or from the state of Missouri,
7 is declared to be an unlawful practice. The use by any person, in connection with the sale or
8 advertisement of any merchandise in trade or commerce or the solicitation of any funds,
9 **property, financial assistance or other thing of value, including the promise or grant of any**
10 **moneys or property of any kind or value**, for any charitable purpose, as defined in section
11 407.453, in or from the state of Missouri of the fact that the attorney general has approved any
12 filing required by this chapter as the approval, sanction or endorsement of any activity, project
13 or action of such person, is declared to be an unlawful practice. Any act, use or employment
14 declared unlawful by this subsection violates this subsection whether committed before, during
15 or after the sale, advertisement or solicitation.

16 2. Nothing contained in this section shall apply to:

17 (1) The owner or publisher of any newspaper, magazine, publication or printed matter
18 wherein such advertisement appears, or the owner or operator of a radio or television station
19 which disseminates such advertisement when the owner, publisher or operator has no knowledge
20 of the intent, design or purpose of the advertiser; or

21 (2) Any institution, company, or entity that is subject to chartering, licensing, or
22 regulation by the director of the department of insurance, financial institutions and professional
23 registration under chapter 354 or chapters 374 to 385, the director of the division of credit unions
24 under chapter 370, or director of the division of finance under chapters 361 to 369, or chapter
25 371, unless such directors specifically authorize the attorney general to implement the powers
26 of this chapter or such powers are provided to either the attorney general or a private citizen by
27 statute.

28 3. Any person who willfully and knowingly engages in any act, use, employment or
29 practice declared to be unlawful by this section with the intent to defraud shall be guilty of a
30 class E felony.

31 4. It shall be the duty of each prosecuting attorney and circuit attorney in their respective
32 jurisdictions to commence any criminal actions under this section, and the attorney general shall
33 have concurrent original jurisdiction to commence such criminal actions throughout the state
34 where such violations have occurred.

35 5. It shall be an unlawful practice for any long-term care facility, as defined in section
36 192.2300, except a facility which is a residential care facility or an assisted living facility, as
37 defined in section 198.006, which makes, either orally or in writing, representation to residents,
38 prospective residents, their families or representatives regarding the quality of care provided, or
39 systems or methods utilized for assurance or maintenance of standards of care to refuse to
40 provide copies of documents which reflect the facility's evaluation of the quality of care, except
41 that the facility may remove information that would allow identification of any resident. If the
42 facility is requested to provide any copies, a reasonable amount, as established by departmental
43 rule, may be charged.

44 6. Any long-term care facility, as defined in section 192.2300, which commits an
45 unlawful practice under this section shall be liable for damages in a civil action of up to one
46 thousand dollars for each violation, and attorney's fees and costs incurred by a prevailing
47 plaintiff, as allowed by the circuit court.

407.020. 1. The act, use or employment by any person of any deception, fraud, false
2 pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or
3 omission of any material fact in connection with the sale or advertisement of any merchandise
4 in trade or commerce or the solicitation of any funds, **property, financial assistance or other**

5 **thing of value, including the promise or grant of any moneys or property of any kind or**
6 **value,** for any charitable purpose, as defined in section 407.453, in or from the state of Missouri,
7 is declared to be an unlawful practice. The use by any person, in connection with the sale or
8 advertisement of any merchandise in trade or commerce or the solicitation of any funds,
9 **property, financial assistance or other thing of value, including the promise or grant of any**
10 **moneys or property of any kind or value,** for any charitable purpose, as defined in section
11 407.453, in or from the state of Missouri of the fact that the attorney general has approved any
12 filing required by this chapter as the approval, sanction or endorsement of any activity, project
13 or action of such person, is declared to be an unlawful practice. Any act, use or employment
14 declared unlawful by this subsection violates this subsection whether committed before, during
15 or after the sale, advertisement or solicitation.

16 2. Nothing contained in this section shall apply to:

17 (1) The owner or publisher of any newspaper, magazine, publication or printed matter
18 wherein such advertisement appears, or the owner or operator of a radio or television station
19 which disseminates such advertisement when the owner, publisher or operator has no knowledge
20 of the intent, design or purpose of the advertiser; or

21 (2) Any institution, company, or entity that is subject to chartering, licensing, or
22 regulation by the director of the department of insurance, financial institutions and professional
23 registration under chapter 354 or chapters 374 to 385, the director of the division of credit unions
24 under chapter 370, or director of the division of finance under chapters 361 to 369, or chapter
25 371, unless such directors specifically authorize the attorney general to implement the powers
26 of this chapter or such powers are provided to either the attorney general or a private citizen by
27 statute.

28 3. Any person who willfully and knowingly engages in any act, use, employment or
29 practice declared to be unlawful by this section with the intent to defraud shall be guilty of a
30 class D felony.

31 4. It shall be the duty of each prosecuting attorney and circuit attorney in their respective
32 jurisdictions to commence any criminal actions under this section, and the attorney general shall
33 have concurrent original jurisdiction to commence such criminal actions throughout the state
34 where such violations have occurred.

35 5. It shall be an unlawful practice for any long-term care facility, as defined in section
36 192.2300, except a facility which is a residential care facility or an assisted living facility, as
37 defined in section 198.006, which makes, either orally or in writing, representation to residents,
38 prospective residents, their families or representatives regarding the quality of care provided, or
39 systems or methods utilized for assurance or maintenance of standards of care to refuse to
40 provide copies of documents which reflect the facility's evaluation of the quality of care, except

41 that the facility may remove information that would allow identification of any resident. If the
42 facility is requested to provide any copies, a reasonable amount, as established by departmental
43 rule, may be charged.

44 6. Any long-term care facility, as defined in section 192.2300, which commits an
45 unlawful practice under this section shall be liable for damages in a civil action of up to one
46 thousand dollars for each violation, and attorney's fees and costs incurred by a prevailing
47 plaintiff, as allowed by the circuit court.

407.453. As used in sections 407.450 to 407.478, the following terms shall mean:

2 (1) "Charitable organization", any person, as defined in section 407.010, **and any**
3 **museum as defined in section 184.102**, who does business in this state or holds property in this
4 state for any charitable purpose and who engages in the activity of soliciting funds [or] ,
5 donations , **property, financial assistance or other thing of value, including the promise or**
6 **grant of any moneys or property of any kind or value** for, or purported to be for, any
7 fraternal, benevolent, social, educational, alumni, historical or other charitable purpose;

8 (2) "Charitable purpose", any purpose which promotes, or purports to promote, directly
9 or indirectly, the well-being of the public at large or any number of persons, whether such
10 well-being is in general or limited to certain activities, endeavors or projects, **and shall include**
11 **the operation of a museum as defined in section 184.102;**

12 (3) "Educational institution", a school, college or other institution which has a defined
13 curriculum, student body and faculty, and which conducts classes on a regular basis;

14 (4) "Professional fund-raiser", any person, as defined in section 407.010, who is retained
15 under contract or otherwise compensated by or on behalf of a charitable organization primarily
16 for the purpose of soliciting funds. The term "professional fund-raiser" shall not include any
17 bona fide employee of a charitable organization who receives regular compensation and is not
18 primarily employed for the purpose of soliciting funds;

19 (5) "Religious organization", any society, sect, persuasion, mission, church, parish,
20 congregation, temple, convention or association of any of the foregoing, diocese or presbytery,
21 or other organization, whether or not incorporated, or any employee thereof, no part of the net
22 earnings of which inures to the benefit of any private party or individual associated with such
23 organization, and that otherwise qualifies as an exempt organization under section 501(c)(3) of
24 title 26, United States Code, as amended, that either:

25 (a) Meets at more or less regular intervals for worship of a supreme being or higher
26 power, or for mutual support or edification in piety or with respect to the idea that a minimum
27 standard of behavior from the standpoint of overall morality is to be observed; or

28 (b) Is, including but not limited to, any nursing, boarding, retirement, children's or
29 orphan's home, or any foundation, commission, hospital, school, college, university, seminary,

30 or other entity, which is owned, operated, controlled, supervised or principally supported by, or
31 associated with through the sharing of common religious bonds and convictions, any
32 organization which meets the requirements of this subdivision;

33 (6) "Solicitation", any request or appeal, either oral or written, or any endeavor to obtain,
34 seek or plead for funds, property, financial assistance or other thing of value, including the
35 promise or grant of any money or property of any kind or value for a charitable purpose, but
36 excluding:

37 (a) Direct grants or allocation of funds received or solicited from any affiliated
38 fund-raising organization by a member agency; and

39 (b) Unsolicited contributions received from any individual donor, foundation, trust,
40 governmental agency or other source, unless such contributions are received in conjunction with
41 a solicitation drive.

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