

FIRST REGULAR SESSION

# SENATE BILL NO. 374

97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR NIEVES.

Read 1st time February 25, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 184.116, 184.119, 184.122, 184.384, 407.010, 407.020, and 407.453, and to enact in lieu thereof eight new sections relating to museums, with a penalty provision.

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*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Section A. Sections 184.116, 184.119, 184.122, 184.384, 407.010, 407.020, 2 and 407.453, RSMo, are repealed and eight new sections enacted in lieu thereof, 3 to be known as sections 29.215, 184.116, 184.119, 184.122, 184.384, 407.010, 4 407.020, and 407.453, to read as follows:

**29.215. 1. Notwithstanding any provision of law to the contrary, 2 the state auditor shall have the power to audit any museum established 3 under sections 184.350 to 184.880 in the same manner as the state 4 auditor may audit any agency of the state.**

**5 2. When the state auditor deems it necessary, proper, or 6 expedient, it shall be the duty of the state auditor to audit any museum 7 district, subdistrict, and commission established under sections 184.350 8 to 184.880. Salaries of auditors, examiners, and other employees of the 9 state auditor making such audit and all expenses incurred shall be paid 10 by such district, subdistrict, and commission with all moneys received 11 to be deposited in the state treasury and credited to the "Petition Audit 12 Revolving Trust Fund".**

184.116. 1. A lender or claimant may bring a civil action for 2 damages for property injured or lost while on loan to a museum. Any 3 party to an action initiated under this section may demand a trial by 4 jury. The court may grant as relief, as it deems appropriate, any

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

5 **permanent or temporary injunction, temporary restraining order, or**  
6 **other order, and may award to the lender or claimant actual and**  
7 **punitive damages, and may award court costs and reasonable attorney**  
8 **fees to the prevailing lender or claimant.**

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

14       **[2.] 3.** No action to recover property on loan shall be brought against a  
15 museum more than one year from the date the museum gives the lender or  
16 claimant notice of intent to terminate the loan or notice of acquisition of title to  
17 undocumented property, or more than five years from the date a notice of intent  
18 to preserve an interest in the property was filed with the museum by the lender  
19 or claimant, whichever occurs earlier.

20       **[3.] 4.** A lender or claimant is considered to have donated loaned property  
21 to the museum if the lender or claimant fails to file an action to recover the  
22 property on loan to the museum within the periods specified in subsections **[1]**  
23 **2** and **[2] 3** of this section.

24       **[4.] 5.** A person who purchases property from a museum acquires good  
25 and valid title to the property if the museum represents to the person that it has  
26 acquired title to the property pursuant to sections 184.101 to 184.122.

27       **[5.] 6.** Notwithstanding subsections 3 and 4 of this section, a lender or  
28 claimant who was not given notice of intent to terminate a loan or notice of  
29 acquisition of title as provided in sections 184.111 and 184.112, respectively, and  
30 who proves that the museum received from the lender or claimant an adequate  
31 notice of intent to preserve an interest in loaned property, which satisfies all of  
32 the requirements of section 184.114, within the seven years immediately  
33 preceding the filing of an action to recover the property, may bring an action to  
34 recover the property or, if the property has been disposed of, the reasonable value  
35 of the property at the time it was disposed of plus interest at the legal rate.

36       **[6.]** A museum is not liable at any time, in the absence of a court order, for  
37 returning property to the original lender, even if a claimant other than the lender  
38 has filed a notice of intent to preserve an interest in property. If persons claim  
39 competing interests in property in the custody of a museum, the burden is upon  
40 the claimants to prove their interest in an action in equity initiated by a

41 claimant. A museum is not liable at any time for returning property to an  
42 uncontested claimant who produced reasonable proof of ownership pursuant to  
43 section 184.114.]

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

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

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

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

10 [(2)] (3) The loan agreement, if any, and a receipt or ledger for property  
11 on loan to the museum;

12 [(3)] (4) A receipt or ledger for property delivered by the museum to  
13 lender or claimant;

14 [(4)] (5) Records containing the following information, as available, for  
15 property in the custody of the museum:

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

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

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

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

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

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

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

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

184.122. The provisions of sections 184.101 to 184.122, to the extent  
2 applicable, shall supersede the provisions of the lost and unclaimed property act,

3 sections 447.010 to 447.595, **but shall not otherwise preempt or limit any**  
4 **other rights of action in law or equity that a lender or claimant may**  
5 **have against a museum.**

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

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

3 (1) "Advertisement", the attempt by publication, dissemination,  
4 solicitation, circulation, or any other means to induce, directly or indirectly, any  
5 person to enter into **or modify** any obligation or acquire any title or interest in  
6 any merchandise, **whether on a permanent or temporary basis;**

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

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

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

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

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

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

407.020. 1. The act, use or employment by any person of any deception,  
2 fraud, false pretense, false promise, misrepresentation, unfair practice or the

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

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

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

25 (2) Any institution, company, or entity that is subject to chartering,  
26 licensing, or regulation by the director of the department of insurance, financial  
27 institutions and professional registration under chapter 354 or chapters 374 to  
28 385, the director of the division of credit unions under chapter 370, or director of  
29 the division of finance under chapters 361 to 369, or chapter 371, unless such  
30 directors specifically authorize the attorney general to implement the powers of  
31 this chapter or such powers are provided to either the attorney general or a  
32 private citizen by statute.

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

36 4. It shall be the duty of each prosecuting attorney and circuit attorney  
37 in their respective jurisdictions to commence any criminal actions under this  
38 section, and the attorney general shall have concurrent original jurisdiction to

39 commence such criminal actions throughout the state where such violations have  
40 occurred.

41 5. It shall be an unlawful practice for any long-term care facility, as  
42 defined in section 660.600, except a facility which is a residential care facility or  
43 an assisted living facility, as defined in section 198.006, which makes, either  
44 orally or in writing, representation to residents, prospective residents, their  
45 families or representatives regarding the quality of care provided, or systems or  
46 methods utilized for assurance or maintenance of standards of care to refuse to  
47 provide copies of documents which reflect the facility's evaluation of the quality  
48 of care, except that the facility may remove information that would allow  
49 identification of any resident. If the facility is requested to provide any copies,  
50 a reasonable amount, as established by departmental rule, may be charged.

51 6. Any long-term care facility, as defined in section 660.600, which  
52 commits an unlawful practice under this section shall be liable for damages in a  
53 civil action of up to one thousand dollars for each violation, and attorney's fees  
54 and costs incurred by a prevailing plaintiff, as allowed by the circuit court.

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

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

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

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

19 (4) "Professional fund-raiser", any person, as defined in section 407.010,  
20 who is retained under contract or otherwise compensated by or on behalf of a

21 charitable organization primarily for the purpose of soliciting funds. The term  
22 "professional fund-raiser" shall not include any bona fide employee of a charitable  
23 organization who receives regular compensation and is not primarily employed  
24 for the purpose of soliciting funds;

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

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

36 (b) Is, including but not limited to, any nursing, boarding, retirement,  
37 children's or orphan's home, or any foundation, commission, hospital, school,  
38 college, university, seminary, or other entity, which is owned, operated,  
39 controlled, supervised or principally supported by, or associated with through the  
40 sharing of common religious bonds and convictions, any organization which meets  
41 the requirements of this subdivision;

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

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

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

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