

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Chandler

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the disposition of museum property.

PETITION OF:

NAME:

Ms. Chandler

DISTRICT/ADDRESS:

First Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02000 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE DISPOSITION OF MUSEUM PROPERTY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 As used in this chapter, the following words shall have the following meanings:-
- 2 “Museum,” an institution or entity located in the commonwealth that:
- 3 (i) is operated by a non-profit corporation, trust, association, public agency, or educational institution;
- 4 (ii) is operated primarily for educational, scientific, historic preservation, cultural or aesthetic purposes;
- 5 and
- 6 (iii) owns, borrows, cares for, exhibits, studies, archives, or catalogues property and shall include, but
- 7 not be limited to, historical societies, historic sites, landmarks, parks, archives, monuments, botanical
- 8 gardens, arboreta, zoos, nature centers, planetaria, aquaria, libraries, technology centers, and art,
- 9 history, science, and natural history museums.
- 10 “Property”, tangible objects, animate or inanimate, in the custody of a museum.

11 “Person”, an individual, association, partnership, corporation, trust, estate, or other entity having a legal
12 interest in property in the custody of a museum.

13 “Lender”, a person who loans property to a museum and whose name appears on the records of a
14 museum as the person legally entitled to property held by the museum.

15 “Claimant”, a person, other than the lender of record, who claims to be legally entitled to, or who
16 establishes his legal entitlement to, property held by the museum.

17 “Loan”, a deposit of property with a museum, for a specified period of time, that is not accompanied by
18 a transfer of title to the property or other evidence of donative intent; but does not include a
19 consignment of property for sale.

20 “Long-term loan”, a loan of property to a museum for an indefinite term.

21 “Undocumented property”, is property:

22 (i) that is held by a museum;

23 (ii) that is assumed to be a gift to the museum; and

24 (iii) whose ownership cannot be determined by reference to the museum’s records.

25 Section 2.(a) All notices given under this chapter must contain the following information:

26 (1) the lender’s or claimant’s name, if known;

27 (2) the lender’s or claimant’s address, if known;

28 (3) a description of the property on loan to the museum;

29 (4) the date of the loan, if known, or the approximate date the property came into the custody of the
30 museum;

31 (5) the name of the museum; and

32 (6) the name, address, and telephone number of the appropriate museum official or office to be
33 contacted regarding the property.

34 (b) A notice mailed to a lender or claimant shall be sent by certified mail, return receipt requested, to
35 the lender's or claimant's address. Notice is deemed given if the museum receives, within 60 days of
36 mailing the notice, a return receipt showing delivery to the lender or claimant. The date of a notice for
37 purposes of this chapter is deemed to be the date of delivery to the person to whom it was sent.

38 (c) If notice is not given in accordance with subsection (b) or if, after a diligent search of its records, a
39 museum does not know or cannot determine the identity or address of the lender or any claimant,
40 notice may be given by publication, in which case notice shall be published:

41 (1) for at least once per week for three successive weeks in a newspaper of general circulation in the
42 county or municipality in which the museum is located; and

43 (2) if the museum has in its records the lender's or claimant's address, at least once per week for three
44 successive weeks in a newspaper of general circulation in the county or municipality in which the lender
45 or claimant is located. For purposes of this chapter, the date of a notice given under this subsection shall
46 be the date of the last published notice under either clause (1) or (2), whichever is later.

47 Section 3. (a) Unless there is a written loan agreement to the contrary, a museum may apply
48 conservation measures to or dispose of undocumented property or property on loan to the museum
49 without the lender's or claimant's permission or formal notice if immediate action is required to protect
50 the property on loan or other property in the custody of the museum, or because the property on loan

51 has become a hazard to the health and safety of the public or to the museum's staff, and if one of the
52 following applies:

53 (1) the property poses an immediate destructive risk to the museum's staff or collection or the general
54 public, in which case the museum may dispose of the property without delay and shall notify the lender
55 of the action taken within 30 days;

56 (2) the museum is unable to reach the lender or claimant at the lender's or claimant's address or phone
57 number and must take action within 30 days; or

58 (3) the museum contacts the lender and the lender or claimant does not agree to the protective
59 measures the museum recommends and does not or is unable to terminate the loan and collect the
60 property within the time the museum determines the action is necessary.

61 (b) Unless a written loan agreement provides otherwise, a museum that applies conservation measures
62 to or disposes of loaned property in accordance with subsection (a):

63 (1) acquires and may enforce a lien on the loaned property in the amount of the costs incurred by the
64 museum; and

65 (2) is not liable to the lender or claimant for damage to, or loss of, the loaned property if the museum:

66 (A) had a reasonable belief at the time the action was taken that the action was necessary; and

67 (B) exercised reasonable care in choosing and applying the conservation measures.

68 Section 4. (a) Unless a written loan agreement provides otherwise, a museum may give notice of the
69 museum's intent to terminate a loan of property at any time if:

70 (1) the property was loaned to the museum for an indefinite term; or

71 (2) the property was loaned to the museum for a specified term and the term has expired.

72 (b) A mailed notice of intent to terminate a loan shall include, in addition to the requirements of Section
73 2 of this chapter, a statement containing the following: "The records of (name of museum) indicate that
74 you have property on loan to it. The museum hereby terminates the loan. If you desire to claim the
75 property, you must contact the museum, establish your ownership of the property, and make
76 arrangements to collect the property. If you fail to do so within one year after the date of this notice,
77 you will be considered to have donated the property to the museum."

78 (c) If a lender or claimant does not respond to the notice of intent to terminate the loan and does not
79 collect the property within one year from the date of the notice, the museum acquires title to the
80 property and may sell, dispose of, or retain the property.

81 Section 5. Property in the possession of a museum for which the museum does not know the identity of
82 the lender or claimant and has no reasonable means of determining such lender or claimant becomes
83 the property of the museum if no person has claimed the property within 7 years after the museum can
84 document possession of the property. The museum becomes the owner of the property on the day
85 after the seven-year period ends, free from all claims. This section does not apply to stolen or
86 confiscated property.

87 Section 6. (a) Unless a written loan agreement exists between the parties, no action shall be brought
88 against a museum or its employees, agents, officers, or trustees for damages because of injury or
89 damage to, or loss of, property loaned to the museum more than two years after the date the lender or
90 claimant has notice of the damage or loss.

91 (b) No action shall be brought against a museum or its employees, agents, officers, or trustees to
92 recover loaned or undocumented property more than two years after the date the museum gives the

93 lender or claimant notice of its intent to terminate the loan or notice of the museum's assertion of title
94 to undocumented property.

95 (c) No action shall be brought against a museum or its employees, agents, officers or trustees to recover
96 loaned property more than two years after the expiration date of the last written contract between the
97 lender or claimant and the museum.

98 (d) A lender or claimant is deemed to have donated loaned property to a museum if the lender or
99 claimant fails to contact the museum and establish his claim to the property or fails to file an action to
100 recover the property on loan to the museum within the period specified in subsections (b) and (c).

101 (e) A person who purchases property from a museum acquires title to the property if the museum has
102 acquired title to the property pursuant to this chapter.

103 (f) Notwithstanding subsections (d) and (e), a lender or claimant who was not given notice of intent to
104 terminate a loan or notice of the museum's assertion of title to undocumented property as prescribed
105 herein, respectively, and who proves that the museum received a satisfactory notice of interest in the
106 property, may recover the property or, if the property has been disposed of, the reasonable value of the
107 property at the time the property was discarded.

108 (g) If persons claim competing interest in property in the custody of a museum, the burden is upon the
109 claimants to prove their interest in an action in equity initiated by a claimant. A museum is not liable for
110 returning property to an uncontested claimant who produces reasonable proof of ownership.

111 Section 7. (a) (1) A museum holding loaned property on or after the effective date of this chapter shall
112 notify the lender, if known, by mail, of the provisions of this chapter. A museum accepting a loan of
113 property on or after the effective date of this chapter shall inform the lender in writing at the time of

114 the loan of the provisions of this chapter. A copy of this chapter or a citation to the provisions of this
115 chapter within the loan agreement shall fulfill this obligation.

116 (2) A museum is responsible for notifying a lender or claimant of the museum's change of address or
117 dissolution.

118 A museum shall retain all written records regarding property acquired under this chapter for at least 10
119 years or until the dissolution of the museum, whichever occurs earlier.

120 (b)(1) A lender, a lender's heir or legal agent, or a claimant is responsible for notifying the museum
121 promptly, in writing, if there is any change in ownership of the loaned property or if there is a change in
122 the name or address of the lender.

123 (2) A lender or claimant may file with the museum a written notice of interest in the property. A notice
124 of interest in the property shall:

125 (A) contain an adequate description of the property to enable the museum to identify the property;

126 (B) be accompanied by documentation sufficient to establish the lender or claimant as the owner of the
127 property; and

128 (C) be signed under penalty of perjury by the lender or claimant, or by a person authorized to act on
129 behalf of the lender or claimant.

130 Section 8. This chapter does not abrogate the rights and obligations of a lender, claimant, or museum
131 identified in a written agreement.

132 This chapter is applicable to all property held or in the custody of a museum on or after the effective
133 date of this chapter.

134 This chapter shall not preclude a museum from availing itself of any other statutory or judicial method
135 of establishing or perfecting title to property in the museum's custody.

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