

HOUSE No. 3138

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to museums and archive repositories..

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

1 The General Laws are hereby amended by inserting after chapter 200A the following
2 chapter:

3 Chapter 200B. The Massachusetts Museum Property Act

4 Section 1. As used in this chapter, the following words shall, unless the context clearly
5 otherwise requires, have the following meanings:-

6 "Archives repository", a nonprofit organization or a public agency whose primary
7 functions include selecting, preserving, and making available records of historical or enduring
8 value, and that is open to the public on a regular basis. Archives repository does not include a
9 public library.

10 "Loan" , the placement of property with a museum or archives repository that is not
11 accompanied by a transfer of title of the property to the museum or archives repository and for
12 which there is some record that the owner intended to retain title to the property. Loan does not
13 include transfers between museums, between archives repositories, or between museums and

14 archives repositories unless the transferring institution specifically provides in writing that the
15 transfer is a loan under this section.

16 "Museum", a nonprofit organization or a public agency that is operated primarily for the
17 purpose of collecting, cataloging, preserving, or exhibiting property of educational, scientific,
18 historic, cultural, or aesthetic interest and that is open to the public on a regular basis. Museum
19 does not include a public library.

20 "Property", personal property.

21 Section 2. (a) Each museum or archives repository shall keep accurate records of all
22 property on loan to the museum or archives repository, including the name and address of the
23 owner, if known, and the beginning and ending date of the loan period. At the time that a person
24 makes a loan to a museum or archives repository, the museum or archives repository shall give
25 the owner of the property a copy of this section. If a museum or archives repository is notified of
26 a change in the ownership of any property loaned to a museum or archives repository, the
27 museum or archives repository shall inform the new owner of the provisions of the loan
28 agreement and shall send the new owner a copy of this section. Not less than 90 days before a
29 museum or archives repository changes its address or dissolves, the museum or archives
30 repository shall notify all owners of that change of address or dissolution. If a museum or
31 archives repository becomes the owner of property pursuant to this chapter, the museum or
32 archives repository shall maintain any records that the museum or archives repository has
33 regarding the property for not less than 2 years after the date on which the museum or archives
34 repository becomes the owner of the property.

35 (b) The owner of property loaned to a museum or archives repository shall provide the
36 museum or archives repository with written notice of any change of the owner's address, of the
37 owner's designated agent, of the designated agent's address, and of the name and address of the
38 new owner if there is a change in the ownership of the property loaned to the museum or
39 archives repository.

40 Section 3. (a) Property loaned to a museum or archives repository whose loan has an
41 expiration date is abandoned when there has not been written contact between the owner and the
42 museum or archives repository for at least 7 years after that expiration date. If the loan has no
43 expiration date, the property is abandoned when there has not been written contact between the
44 owner and the museum or archives repository for at least 7 years after the museum or archives
45 repository took possession of the property.

46 (b) If a museum or archives repository wishes to acquire title to abandoned property, the
47 museum or archives repository shall, not less than 60 days after property is abandoned pursuant
48 to this section, send a notice by certified mail with return receipt requested to the owner's last
49 known address. The notice shall contain all of the following: a statement that the loan is
50 terminated and that the property is abandoned; a description of the property; a statement that the
51 museum or archives repository will become the owner of the property if the present owner does
52 not submit a written claim to the property to the museum or archives repository within 60 days
53 after receipt of the notice; and a statement that the museum or archives repository will make
54 arrangements with the owner to return the property to the owner or dispose of the property as the
55 owner requests if the owner submits a written claim to the property to the museum or archives
56 repository within 60 days after receipt of the notice. This notice shall be substantially in the
57 following form:

58 NOTICE OF ABANDONMENT OF PROPERTY

59 Please be advised that the loan agreement is terminated for the following property
60 (describe the property in sufficient detail to identify the property):

61 The above described property that you loaned to (name and address of museum or
62 archives repository) will be considered abandoned by you and will become the property of (name
63 of museum or archives repository) if you fail to submit to the museum or archives repository a
64 written claim to the property within 60 days after receipt of this notice. If you do submit a
65 written claim to the property within 60 days after receipt of this notice, (name of museum or
66 archives repository) will arrange to return the property to you or dispose of the property as you
67 request. The cost of returning the property to you or disposing of the property is your
68 responsibility unless you have made other arrangements with the museum or archives repository.

69 (c) If the notice sent by the museum or archives repository pursuant to this section is
70 returned to the museum or archives repository undelivered, the museum or archives repository
71 shall give notice of the abandoned property by publication, and the organization's website, if
72 applicable, containing the following: the name and last known address of the present owner; a
73 description of the property; a statement that the property is abandoned and that the museum or
74 archives repository will become the owner of the property if no person can prove their ownership
75 of the property; a statement that a person claiming ownership of the property shall notify the
76 museum or archives repository in writing of that claim within 60 days after publication of the last
77 legal notice; and the name and mailing address of the person who may be contacted at the
78 museum or archives repository if a person wants to submit a written claim to the property.

79 (d) If the museum or archives repository receives a timely written claim for the property
80 from the owner or the owner's agent in response to the notice sent pursuant to this section, the
81 museum or archives repository shall return the property to the owner or dispose of the property
82 as the owner requests. The owner shall advise the museum or archives repository in writing as to
83 how the property shall be disposed of or returned to the owner. Costs of returning the property
84 or disposing of the property shall be the responsibility of the owner unless the owner and the
85 museum or archives repository have made other arrangements.

86 (e) If the museum or archives repository receives a timely written claim for the property
87 from a person other than the person who loaned the property to the museum or archives
88 repository in response to the notice sent pursuant to this section, the museum or archives
89 repository shall, within 60 days after receipt of the written claim, determine if the claim is valid.
90 A claimant shall submit proof of ownership with the claim. If more than one person submits a
91 timely written claim, the museum or archives repository may delay its determination of
92 ownership until the competing claims are resolved by agreement or legal action. If the museum
93 or archives repository determines that the claim is valid, or if the competing claims are resolved
94 by agreement or judicial action, the museum or archives repository shall return the property to
95 the claimant submitting the valid claim or dispose of the property as the valid claimant requests.
96 Costs of returning the property or disposing of the property shall be the responsibility of the valid
97 claimant.

98 (f) If the museum or archives repository does not receive a timely written claim to the
99 property or if the museum or archives repository determines that no valid timely claim to the
100 property was submitted, the museum or archives repository becomes the owner of the property.
101 The museum or archives repository becomes the owner of the property on the day after the

102 period for submitting a written claim ends or on the day after the museum or archives repository
103 determines that no valid timely written claim was submitted. The museum or archives repository
104 owns the property free from all claims.

105 Section 4. (a) Property in the possession of a museum or archives repository which the
106 museum or archives repository has reason to believe may be on loan and, for which the museum
107 or archives repository does not know the owner, or have any reasonable means of determining
108 the owner, becomes the property of the museum or archives repository if no person has claimed
109 the property within 7 years after the museum or archives repository took possession of the
110 property. The museum or archives repository becomes the owner of the property on the day after
111 the 7-year period ends, and after following the notification process outlined pursuant to this
112 section, free from all claims.

113 (b) The museum or archives repository that wishes to acquire title to undocumented
114 property described in subsection (a) shall provide public notice in the manner described in
115 section 2.

116 Section 5. Property that is found in or on property controlled by the museum; is from an
117 unknown source; and might reasonably be assumed to have been intended as a gift to the
118 museum, is conclusively presumed to be a gift to the museum if ownership of the property is not
119 claimed by a person within 90 days of its discovery.

120 Section 6. (a) Unless there is a written loan agreement to the contrary, a museum may
121 apply conservation measures to property on loan to the museum without the lender's permission
122 or formal notice if action is required to protect the property on loan or other property in the
123 custody of the museum, or the property on loan is a hazard to the health and safety of the public

124 or the museum staff, and either: the museum is unable to reach the lender at the lender's last
125 known address within 3 days before the time the museum determines action is necessary; or the
126 lender does not respond or will not agree to the protective measures the museum recommends
127 and does not terminate the loan and retrieve the property within 3 days.

128 (b) If a museum applies conservation measures to property under this section, or with the
129 agreement of the lender, unless the agreement provides otherwise, the museum acquires a lien on
130 the property in the amount of the costs incurred by the museum.

131 (c) The museum is not liable for injury to or loss of the property if the museum: had a
132 reasonable belief at the time the action was taken that the action was necessary to protect the
133 property on loan or other property in the custody of the museum, or that the property on loan was
134 a hazard to the health and safety of the public or the museum staff, and exercised reasonable care
135 in the choice and application of conservation measures.

136 Section 7. This act shall be known as "The Massachusetts Museum Property Act".