

SENATE No. 1864

The Commonwealth of Massachusetts

In the Year Two Thousand 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 SECTION 1. As used in this chapter, the following words shall have the following
2 meanings:-

3 “Museum,” an institution or entity located in the commonwealth that:

4 (i) is operated by a non-profit corporation, trust, association, public agency, or
5 educational institution;

6 (ii) is operated primarily for educational, scientific, historic preservation, cultural or
7 aesthetic purposes; and

8 (iii) owns, borrows, cares for, exhibits, studies, archives, or catalogues property and shall
9 include, but not be limited to, historical societies, historic sites, landmarks, parks, archives,
10 monuments, botanical gardens, arboreta, zoos, nature centers, planetaria, aquaria, libraries,
11 technology centers, and art, history, science, and natural history museums.

12 “Property”, tangible objects, animate or inanimate, in the custody of a museum.

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

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

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

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

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

“Undocumented property”, is property:

(i) that is held by a museum;

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

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

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

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

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

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

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

(5) the name of the museum; and

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

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

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

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

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

SECTION 3. (a) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of undocumented property or property on loan to the museum without the lender's or claimant's permission or formal notice if immediate action is required to protect the property on loan or other property in the custody of the museum, or because the property on loan has become a hazard to the health and safety of the public or to the museum's staff, and if one of the following applies:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. Property in the possession of a museum for which the museum does not
know the identity of the lender or claimant and has no reasonable means of determining such
lender or claimant becomes the property of the museum if no person has claimed the property
within 7 years after the museum can document possession of the property. The museum

becomes the owner of the property on the day after the seven-year period ends, free from all claims. This section does not apply to stolen or confiscated property.

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

(b) No action shall be brought against a museum or its employees, agents, officers, or trustees to recover loaned or undocumented property more than two years after the date the museum gives the lender or claimant notice of its intent to terminate the loan or notice of the museum's assertion of title to undocumented property.

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

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

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

(f) Notwithstanding subsections (d) and (e), a lender or claimant who was not given notice of intent to terminate a loan or notice of the museum's assertion of title to undocumented

property as prescribed herein, respectively, and who proves that the museum received a satisfactory notice of interest in the property, may recover the property or, if the property has been disposed of, the reasonable value of the property at the time the property was discarded.

(g) If persons claim competing interest 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 for returning property to an uncontested claimant who produces reasonable proof of ownership.

SECTION 7. (a) (1) A museum holding loaned property on or after the effective date of this chapter shall notify the lender, if known, by mail, of the provisions of this chapter. A museum accepting a loan of property on or after the effective date of this chapter shall inform the lender in writing at the time of the loan of the provisions of this chapter. A copy of this chapter or a citation to the provisions of this chapter within the loan agreement shall fulfill this obligation.

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

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

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

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

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

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

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

142 SECTION 8. This chapter does not abrogate the rights and obligations of a lender,
143 claimant, or museum identified in a written agreement.

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

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