

**SENATE . . . . . No. 1864**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Harriette L. 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:

Harriette L. Chandler

DISTRICT/ADDRESS:

First Worcester

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

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### 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 educational  
5 institution;

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

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

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

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

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

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

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

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

23 “Undocumented property”, is property:

24 (i) that is held by a museum;

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

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

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

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

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

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

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

33 (5) the name of the museum; and

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

36 (b) A notice mailed to a lender or claimant shall be sent by certified mail, return receipt  
37 requested, to the lender's or claimant's address. Notice is deemed given if the museum receives, within  
38 60 days of mailing the notice, a return receipt showing delivery to the lender or claimant. The date of a  
39 notice for purposes of this chapter is deemed to be the date of delivery to the person to whom it was sent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 **SECTION 5.** Property in the possession of a museum for which the museum does not know the  
88 identity of the lender or claimant and has no reasonable means of determining such lender or claimant  
89 becomes the property of the museum if no person has claimed the property within 7 years after the  
90 museum can document possession of the property. The museum becomes the owner of the property on  
91 the day after the seven-year period ends, free from all claims. This section does not apply to stolen or  
92 confiscated property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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