

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 367*

Short Title: Title to Unclaimed Collections.-AB (Public)

Sponsors: Representatives Brody, Conrad, Torbett, and T. Moore (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Finance, if favorable, Appropriations.

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF CULTURAL RESOURCES, OFFICE OF ARCHIVES AND HISTORY, TO USE THE NET PROCEEDS OF THE SALE OF ARTIFACTS FOR MAINTENANCE OR CONSERVATION OF OTHER ARTIFACTS AND TO CLARIFY THE PROCESS FOR TRANSFERRING TITLE OF UNCLAIMED OR UNDOCUMENTED PROPERTY LOANED TO MUSEUMS AND HISTORICAL REPOSITORIES TO THOSE MUSEUMS AND HISTORICAL REPOSITORIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 121-7 reads as rewritten:

"§ 121-7. Historical museums.

(a) The Department of Cultural Resources shall maintain and administer State historic attractions under the management of the Office of Archives and History for the collection, preservation, study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history or specialized regional history museums may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

The Department of Cultural Resources may, with the explicit approval of the North Carolina Historical Commission sell, trade, or place on permanent loan any artifact owned by the State of North Carolina and in the custody of and curated by the Office of Archives and History, unless the sale, trade, or loan would be contrary to the terms of acquisition. The net proceeds of any sale, after deduction of the expenses attributable to that sale, shall be deposited to the State treasury to the credit of the Office of Archives and History Artifact Fund and shall be used only for the purchase—expenses associated with the purchase, maintenance, or conservation of other artifacts. No artifact curated by any agency of the Department of Cultural Resources may be pledged or mortgaged.

(b) Insofar as practicable, the Office of Archives and History shall accession and maintain records showing provenance, value, location, and other pertinent information on such furniture, furnishings, decorative items, and other objects as have historical or cultural



1 importance and which are owned by or to be acquired by the State for use in the State Capitol
2 and the Executive Mansion, and, upon request of the Department of Administration, any other
3 state-owned building. When any such item or object has been entered in the accession records
4 of the Office of Archives and History, the custodian of such item or object shall, upon its
5 removal from the premises upon which it was located or when it is otherwise disposed of,
6 submit to the Office of Archives and History sufficient details concerning its removal or
7 disposition to permit an adequate entry in the accession records to the end that its location or
8 disposition, and authority for such change, shall be shown therein.

9 ~~(e) Title to an artifact whose ownership is unknown or whose owner cannot be located
10 passes to the Department of Cultural Resources if:~~

- 11 ~~(1) The artifact was placed on loan with the Office of Archives and History for a
12 period of time exceeding five years or for an indefinite period of time or the
13 artifact's status with the Office of Archives and History as a loan, gift,
14 purchase, or other arrangement is unknown; and~~
- 15 ~~(2) The artifact has been a part of the inventory of the Office of Archives and
16 History for more than five years; and~~
- 17 ~~(3) The Department of Cultural Resources makes a reasonable effort, including
18 a diligent search of its own records, to locate and inform the owner, his heirs
19 or successors, that the Office of Archives and History is holding the artifact
20 and to clarify the artifact's status with that Office.~~

21 ~~To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources
22 shall mail, first class postage prepaid, a notice to the last known address of the owner of the
23 artifact or the last known address of the owner's heirs or successors. The Department need not
24 mail a notice, if after exercising due diligence to find a record within the Department of
25 Cultural Resources indicating the owner of the artifact and his latest address, that information is
26 not available. If no claim is made within 90 days from the date that notice is mailed, the
27 Department of Cultural Resources shall publish a notice in three papers of general circulation
28 once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is
29 submitted to the Department of Cultural Resources, the Department may determine that legal
30 title to the artifact is vested in the Office of Archives and History.~~

31 ~~(d) Any person claiming legal title to an artifact to which the North Carolina Office of
32 Archives and History also claims title as provided by subsection (e) may file a claim with the
33 Department of Cultural Resources on a form prescribed by the Department. If the claimant is
34 not the owner from whom the Department originally obtained the artifact, the claimant shall
35 state in addition to any other information required by the Department, the facts surrounding the
36 unavailability of the person who originally loaned or bestowed the property to the Office of
37 Archives and History and the basis for the claim to title of the artifact. If the Department of
38 Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of
39 the artifact, the Department shall return the artifact to the owner. If the Department determines
40 that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the
41 determination as provided by Chapter 150B."~~

42 **SECTION 2.** Chapter 121 of the General Statutes is amended by adding a new
43 Article to read:

44 "Article 5.

45 "Museum and Archives Repository Property.

46 **"§ 121-50. Legislative findings and declaration.**

47 The General Assembly finds and declares that the growth and maintenance of collections in
48 museums and archives repositories, both public and private, is a matter of general public
49 interest to the citizens of North Carolina. Museums and archives repositories of all kinds
50 depend upon loans of various articles of property to promote and encourage the teaching of
51 North Carolina and local history, and to preserve and care for historical manuscripts, materials,

1 and artifacts. The uncertainty regarding title to and responsibility for loaned property is a
2 hindrance to museums and archives repositories in their efforts to maintain, repair, and dispose
3 of property in their possession. The purpose of this Article is to terminate stale claims and to
4 fairly and reasonably allocate responsibilities for the determination of title and financial
5 responsibilities in certain cases.

6 **"§ 121-51. Definitions.**

7 The following definitions apply in this Article:

- 8 (1) Address. – A description of the location of the lender as shown on a museum
9 or archives repository's records that is sufficient for delivery by mail.
- 10 (2) Archives repository. – A nonprofit organization or a public agency that is
11 open to the public on a regular basis and whose primary functions include
12 selecting, preserving, and making available records of historical or enduring
13 value. As used in this Article, the term "archives repository" includes
14 libraries.
- 15 (3) Loan. – The placement of property with a museum or archives repository
16 that is not accompanied by a transfer of title of the property to the museum
17 or archives repository and for which there is some record that the owner
18 intended to retain title to the property. The term "loan" does not include
19 transfers between museums, between archives repositories, or between
20 museums and archives repositories unless the transferring institution
21 specifically provides in writing that the transfer is a loan under this Article.
- 22 (4) Museum. – A nonprofit organization or a public agency that is open to the
23 public on a regular basis and is operated primarily for the purpose of
24 collecting, cataloging, preserving, or exhibiting property of educational,
25 scientific, historic, cultural, or aesthetic interest. As used in this Article, the
26 term "museum" includes historical societies and historic sites.
- 27 (5) Property. – A tangible object under the care of a museum or archives
28 repository that has intrinsic historic, artistic, scientific, educational, or
29 cultural value.
- 30 (6) Valid claim. – A written notice of intent to preserve an interest in property
31 on loan to a museum or archives repository, including:
32 a. A description of the property adequate to enable the museum or
33 archives repository to identify the property.
34 b. Documentation sufficient to establish the claimant as owner of the
35 property.
36 c. A statement attesting to the truth, to the best of the signer's
37 knowledge, of all information included in or with the notice.
38 d. The signature, under penalty of perjury, of the claimant or a person
39 authorized to act on behalf of the claimant.

40 **"§ 121-52. Acquisition of title to loaned property.**

41 (a) A museum or archives repository may acquire the title to documented property
42 loaned to the museum or archives repository if (i) the term of the loan has expired and at least
43 seven years have passed without written or other contact between the lender and the museum or
44 archives repository or (ii) the term of the loan does not have an expiration date but at least
45 seven years have passed without written or other contact between the lender and the museum or
46 archives repository since the loan was made.

47 (b) To acquire title to property under this section, the museum or archives repository
48 shall first send a notice by certified mail to the lender's last known address. The notice must
49 include all of the following:

- 50 (1) The lender's name and last known address.
51 (2) A brief and general description of the property.

- 1 (3) A statement that the term of the loan has been terminated.
2 (4) The date or approximate date, if known, when the owner loaned the property
3 to the museum or archives repository.
4 (5) The name, address, and telephone number of the museum or archives
5 repository representative to contact for more information or to claim
6 ownership.
7 (6) A statement that outlines the schedule and requirements for the museum or
8 archives repository to acquire title under this section.
9 (c) If a valid claim to the property is not received by the museum or archives repository
10 within 30 days from the date the notice was mailed, the museum or archives repository shall do
11 either of the following:
12 (1) If the museum or archives repository knows the last known address of the
13 lender, the museum or archives repository shall publish a notice at least once
14 a week for two consecutive weeks in a newspaper of general circulation in
15 either (i) the county in this State where the lender's last known address is
16 located or (ii) the county, borough, or other geographical organizational
17 entity of the jurisdiction in which the lender's last known address is located
18 in another State. The notice shall contain the following information:
19 a. The information required for the notice under subdivisions (b)(1)
20 through (b)(5) of this section.
21 b. The date of the last publication of the notice under subsection (c) of
22 this section.
23 c. A statement that the museum or archives repository will acquire title
24 to the loaned property if a valid claim to the property is not received
25 by the museum or archives repository within 45 days from the date of
26 the last publication of the notice under subsection (c) of this section.
27 (2) If the museum or archives repository does not have an address for the lender,
28 the museum or archives repository shall publish a notice at least once a week
29 for two consecutive weeks in a newspaper of general circulation in the
30 county where the museum or archives repository is located. The notice shall
31 contain the information set out in sub-subdivisions (c)(1)a. through c. of this
32 section.
33 (d) If the requirements of subsections (a) through (c) of this section are satisfied and if a
34 valid claim to the loaned property is not received by the museum or archives repository within
35 45 days after the date of the last publication of the notice required by subsection (c) of this
36 section, the museum or archives repository acquires the title to the property on the 46th day
37 after the date of the last publication of the notice under subsection (c) of this section. Upon
38 acquiring title, the museum or archives repository shall own the property free and clear from all
39 claims.
40 (e) If the museum or archives repository is satisfied that the claim is valid and that the
41 claimant is the legal owner of the artifact, the museum or archives repository shall return the
42 artifact to the owner at the owner's expense.
43 (f) Nothing in this Article shall be construed to convert a loan into a bailment. All
44 equitable and legal defenses shall be available to museums and archives repositories in the
45 event of a dispute over ownership.
46 **§ 121-53. Responsibilities of owners of loaned property; representation of ownership;**
47 **disputed ownership.**
48 (a) Lender's Responsibilities. – In all cases, it shall be the responsibility of the owner of
49 loaned property to notify the museum or archives repository in writing of the owner's identity
50 and current address. It shall be the responsibility of any new owner acquiring loaned property
51 to notify the museum or archives repository within 60 days of his or her name and address. Any

1 owner of loaned property shall, upon request from a museum or archives repository holding
2 loaned property, promptly provide evidence of ownership satisfactory to the museum or
3 archives repository. This section shall apply to all changes in ownership, whether by sale, gift,
4 devise, operation of law, or any other means. So long as a museum or archives repository deals
5 honestly and in good faith, no museum or archives repository shall be prejudiced by reason of
6 any failure to deal with the true owner of any loaned property if the owner has failed to comply
7 with the requirements of this section.

8 (b) Representation of Ownership. – A museum or archives repository shall not be liable
9 for actions taken in reasonable reliance upon the representations of the person who first
10 transfers an item of property to the museum or archives repository that he or she is the true
11 owner of the loaned property.

12 (c) Disputed Ownership. – In cases of disputed ownership of loaned property, a
13 museum or archives repository may maintain possession of loaned property during the dispute
14 and shall not be held liable for its refusal to surrender loaned property in its possession except
15 in reliance upon a court order or judgment.

16 **"§ 121-54. Museum or archives repository's lien for expenses.**

17 (a) When the lender of loaned property is known, a museum or archives repository may
18 charge the lender expenses for the reasonable care of loaned property unclaimed after the
19 expiration date of the loan.

20 (b) When the lender of loaned property is unknown, a museum or archives repository
21 may place a lien against the value of specific loaned property for expenses reasonably
22 necessary to protect the loaned property from ordinary decay and deterioration due to natural
23 causes, theft, or vandalism.

24 **"§ 121-55. Acquisition of undocumented property.**

25 (a) Property in the possession of a museum or archives repository which the museum or
26 archives repository has reason to believe may be on loan and for which the museum or archives
27 repository does not know the owner or have any reasonable means of determining the owner
28 becomes the property of the museum or archives repository if no person has claimed the
29 property within seven years after the museum or archives repository or a predecessor or
30 assignor of the museum or archives repository took possession of the property. After following
31 the notification process outlined in subsection (b) of this section, the museum or archives
32 repository shall become the owner of the property on the day after the seven-year period ends
33 and shall be free and clear from all claims.

34 (b) The museum or archives repository that wishes to acquire title to undocumented
35 property described in subsection (a) of this section shall provide public notice in the manner
36 described in G.S. 121-52."

37 **SECTION 3.** This act is effective when it becomes law.