

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH20061-LG-55 (03/02)

Short Title: Change DCR Process for Unclaimed Property.-AB (Public)

Sponsors: Representatives R. Brown, Cleveland, Floyd, and Riddell (Primary Sponsors).

Referred to:

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; TO CLARIFY THE PROCESS FOR TRANSFERRING TITLE OF UNCLAIMED OR UNDOCUMENTED PROPERTY LOANED TO MUSEUMS AND HISTORICAL REPOSITORIES TO THOSE MUSEUMS AND HISTORICAL REPOSITORIES; AND TO SET A TIME LIMITATION ON CONFIDENTIALITY OF RECORDS.

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 sites and museums~~ 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.

...

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



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

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

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

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

"Article 5.

"Museum and Archives Repository Property.

"§ 121-50. Legislative findings and declaration.

The General Assembly finds and declares that the growth and maintenance of collections in museums and archives repositories, both public and private, is a matter of general public interest to the citizens of North Carolina. Museums and archives repositories of all kinds depend upon loans of various articles of property to promote and encourage the teaching of North Carolina and local history and to preserve and care for historical manuscripts, materials, and artifacts. The uncertainty regarding title to and responsibility for loaned property is a hindrance to museums and archives repositories in their efforts to maintain, repair, and dispose of property in their possession. The purpose of this Article is to terminate stale claims and to fairly and reasonably allocate responsibilities for the determination of title and financial responsibilities in certain cases.

"§ 121-51. Definitions.

The following definitions apply in this Article:

- (1) Address. – A description of the location of the lender as shown on a museum or archives repository's records that is sufficient for delivery by mail.

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

31 **§ 121-52. Acquisition of title to loaned property.**

32 (a) A museum or archives repository may acquire the title to documented property
33 loaned to the museum or archives repository if (i) the term of the loan has expired and at least
34 seven years have passed without written or other contact between the lender and the museum or
35 archives repository or (ii) the term of the loan does not have an expiration date but at least
36 seven years have passed without written or other contact between the lender and the museum or
37 archives repository since the loan was made.

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

- 41 (1) The lender's name and last known address.
- 42 (2) A brief and general description of the property.
- 43 (3) A statement that the term of the loan has been terminated.
- 44 (4) The date or approximate date, if known, when the owner loaned the property
45 to the museum or archives repository.
- 46 (5) The name, address, and telephone number of the museum or archives
47 repository representative to contact for more information or to claim
48 ownership.
- 49 (6) A statement that outlines the schedule and requirements for the museum or
50 archives repository to acquire title under this section.

1 (c) If a valid claim to the property is not received by the museum or archives repository
2 within 30 days from the date the notice was mailed, the museum or archives repository shall do
3 the following:

4 (1) If the museum or archives repository knows the last known address of the
5 lender, publish a notice:

6 a. At least once a week for two consecutive weeks in a newspaper of
7 general circulation in either (i) the county in this State where the
8 lender's last known address is located or (ii) the county, borough, or
9 other geographical organizational entity of the jurisdiction in which
10 the lender's last known address is located in another State.

11 b. At least 30 consecutive days on the museum or archives repository's
12 official Internet Web site.

13 (2) If the museum or archives repository does not have an address for the lender,
14 publish a notice at least once a week for two consecutive weeks in a
15 newspaper of general circulation in the county where the museum or
16 archives repository is located.

17 (3) Include in the notice required by subdivisions (1) and (2) of this subsection
18 all of the following:

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 this subsection.

22 c. A statement that the museum or archives repository will acquire title
23 to the loaned property if a valid claim to the property is not received
24 by the museum or archives repository within 45 days from the date of
25 the last publication of the notice under this subsection.

26 (d) If the requirements of subsections (a) through (c) of this section are satisfied and if a
27 valid claim to the loaned property is received by the museum or archives repository within 45
28 days after the date of the last publication of the notice required by subsection (c) of this section,
29 the Department of Cultural Resources shall have 45 days to determine whether the claim is
30 valid and that the claimant is the legal owner of the artifact. If the Department determines that
31 the claim is valid and that the claimant is the legal owner of the artifact, the Department shall
32 return the artifact to the owner at the owner's expense.

33 (e) 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 of ownership.

40 **"§ 121-53. Disputed ownership.**

41 (a) If the Department determines that the claim of ownership is not valid and rejects the
42 claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B of
43 the General Statutes. The burden shall be on the claimant to prove that the claimant is the legal
44 owner of the property.

45 (b) Nothing in this Article shall be construed to convert a loan into a bailment. All
46 equitable and legal defenses shall be available to museums and archives repositories in the
47 event of a dispute over ownership.

48 (c) In cases of disputed ownership of loaned property, a museum or archives repository
49 may maintain possession of loaned property during the dispute and shall not be held liable for
50 its refusal to surrender loaned property in its possession except in reliance upon a court order or
51 judgment.

"§ 121-54. Responsibilities of owners of loaned property; representation of ownership.

(a) Lender's Responsibilities. – In all cases, it shall be the responsibility of the owner of loaned property to notify the museum or archives repository in writing of the owner's identity and current address. It shall be the responsibility of any new owner acquiring loaned property to notify the museum or archives repository within 60 days of his or her name and address. Any owner of loaned property shall, upon request from a museum or archives repository holding loaned property, promptly provide evidence of ownership satisfactory to the museum or archives repository. This section shall apply to all changes in ownership, whether by sale, gift, devise, operation of law, or any other means. So long as a museum or archives repository deals honestly and in good faith, no museum or archives repository shall be prejudiced by reason of any failure to deal with the true owner of any loaned property if the owner has failed to comply with the requirements of this section.

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

"§ 121-55. Museum or archives repository's lien for expenses.

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

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

"§ 121-56. Acquisition of undocumented property.

(a) Property in the possession of a museum or archives repository which the museum or archives repository has reason to believe may be on loan and for which the museum or archives repository does not know the owner or have any reasonable means of determining the owner becomes the property of the museum or archives repository if no person has claimed the property within seven years after the museum or archives repository or a predecessor or assignor of the museum or archives repository took possession of the property. After following the notification process set out in G.S. 121-52, the museum or archives repository shall become the owner of the property on the day after the seven-year period ends and shall be free and clear from all claims of ownership.

(b) The requirements of G.S. 121-52 and G.S. 121-53 shall apply to valid and disputed claims of ownership to undocumented property.

"§ 121-57. Exclusivity of provisions.

The provisions of this Article shall control the procedure and disposition of any property to which it applies in lieu of any other procedure prescribed by law."

SECTION 3. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-11. Time limitation on confidentiality of records.

(a) Notwithstanding any other provision of law, all restrictions on access to public records shall expire 100 years after the creation of the record.

(b) Subsection (a) of this section shall apply to any public record in existence at the time of, or created after, the effective date of this section.

(c) No provision of this section shall be constructed to authorize or require the opening of any record that:

- (1) Is ordered to be sealed by any state or federal court, except as provided by that court;
- (2) Is prohibited from being disclosed under deferral law; or

- 1 (3) Contains detailed plans and drawings of public buildings and infrastructure
2 facilities."
3 **SECTION 4.** This act is effective when it becomes law.