

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

FILED SENATE  
Apr 2, 2013  
S.B. 697  
PRINCIPAL CLERK

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SENATE DRS75195-LGf-78A\* (03/12)

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

Sponsors: Senator Sanderson (Primary Sponsor).

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 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 importance and which are owned by or to be acquired by the State for use in the State Capitol



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

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

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

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

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

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

43 "Article 5.

44 "Museum and Archives Repository Property.

45 **"§ 121-50. Legislative findings and declaration.**

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

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

5 **"§ 121-51. Definitions.**

6 The following definitions apply in this Article:

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

39 **"§ 121-52. Acquisition of title to loaned property.**

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

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

- 49 (1) The lender's name and last known address.
- 50 (2) A brief and general description of the property.
- 51 (3) A statement that the term of the loan has been terminated.

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

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

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

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

15 **"§ 121-54. Museum or archives repository's lien for expenses.**

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

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

23 **"§ 121-55. Acquisition of undocumented property.**

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

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

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