

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 184
Committee Substitute Favorable 4/1/15
Third Edition Engrossed 4/2/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H184-PCS10423-RN-38

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

(Public)

Sponsors:

Referred to:

March 11, 2015

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; TO SET A TIME LIMITATION ON CONFIDENTIALITY OF RECORDS; AND TO CLARIFY THAT PHOTOGRAPHS AND VIDEO RECORDINGS OF DERELICT VESSELS OR SHIPWRECKS ARE PUBLIC RECORDS WHEN IN THE CUSTODY OF NORTH CAROLINA AGENCIES.

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~~ in the Office of Archives and History Artifact Fund to the credit of the museum or archives that had custody of the artifact sold and shall be used only for



* H 1 8 4 - P C S 1 0 4 2 3 - R N - 3 8 *

1 the ~~purchase~~ expenses associated with the purchase, maintenance, or conservation of other
2 artifacts. No artifact curated by any agency of the Department of Cultural Resources may be
3 pledged or mortgaged.

4 ...

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

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

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

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

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

40 "Article 5.

41 "Museum and Archives Repository Property.

42 **"§ 121-50. Legislative findings and declaration.**

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

1 fairly and reasonably allocate responsibilities for the determination of title and financial
2 responsibilities in certain cases.

3 **"§ 121-51. Definitions.**

4 The following definitions apply in this Article:

- 5 (1) Address. – A description of the location of the lender as shown on a museum
6 or archives repository's records that is sufficient for delivery by mail.
7 (2) Archives repository. – An archives repository shall have the same meaning
8 as the term "North Carolina State Archives" as defined in G.S. 121-2(7).
9 (3) Loan. – The placement of property with a museum or archives repository
10 that is not accompanied by a transfer of title of the property to the museum
11 or archives repository and for which there is some record that the owner
12 intended to retain title to the property. The term "loan" does not include
13 transfers between museums, between archives repositories, or between
14 museums and archives repositories unless the transferring institution
15 specifically provides in writing that the transfer is a loan under this Article.
16 (4) Museum. – A museum shall include any museum or historic site
17 administered by the Department of Cultural Resources, including the term
18 "North Carolina Museum of History" as defined in G.S. 121-2(6).
19 (5) Property. – A tangible object under the care of a museum or archives
20 repository that has intrinsic historic, artistic, scientific, educational, or
21 cultural value.
22 (6) Valid claim. – A written notice of intent to preserve an interest in property
23 on loan to a museum or archives repository, including:
24 a. A description of the property adequate to enable the museum or
25 archives repository to identify the property.
26 b. Documentation sufficient to establish the claimant as owner of the
27 property.
28 c. A statement attesting to the truth, to the best of the signer's
29 knowledge, of all information included in or with the notice.
30 d. The signature, under penalty of perjury, of the claimant or a person
31 authorized to act on behalf of the claimant.

32 **"§ 121-52. Acquisition of title to loaned property.**

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

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

- 42 (1) The lender's name and last known address.
43 (2) A brief and general description of the property.
44 (3) A statement that the term of the loan has been terminated.
45 (4) The date or approximate date, if known, when the owner loaned the property
46 to the museum or archives repository.
47 (5) The name, address, and telephone number of the museum or archives
48 repository representative to contact for more information or to claim
49 ownership.
50 (6) A statement that outlines the schedule and requirements for the museum or
51 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 (1)
20 through (5) of subsection (b) 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 forty-sixth
37 day 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 that 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 construed to authorize or require the opening of any record that meets any of the following criteria:

- (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 federal law, rule, or regulation.

1 (3) Contains federal Social Security numbers.

2 (4) Is a juvenile, probationer, parolee, post-releasee, or prison inmate record,
3 including medical and mental health records.

4 (5) Contains detailed plans and drawings of public buildings and infrastructure
5 facilities.

6 (d) For purposes of this section, the custodian of the record shall be the Department of
7 Cultural Resources or other agency in actual possession of the record."

8 **SECTION 4.(a)** G.S. 121-25 reads as rewritten:

9 "**§ 121-25. License to conduct exploration, recovery or salvage operations.**

10 (a) Any qualified person, firm or corporation desiring to conduct any type of
11 exploration, recovery or salvage operations, in the course of which any part of a derelict vessel
12 or its contents or other archaeological site may be removed, displaced or destroyed, shall first
13 make application to the Department of Cultural Resources and obtain a permit or license to
14 conduct such operations. If the Department of Cultural Resources shall find that the granting of
15 such permit or license is in the best interest of the State, it may grant such applicant a permit or
16 license for such a period of time and under such conditions as the Department may deem to be
17 in the best interest of the State. ~~Such~~ Except as otherwise provided in subsection (b) of this
18 section, such permit or license may include but need not be limited to any of the following:

19 (1) Payment of monetary fee to be set by the ~~Department;~~Department.

20 (2) That a portion or all of the historic material or artifacts be delivered to
21 custody and possession of the ~~Department;~~Department.

22 (3) That a portion of all of such relics or artifacts may be sold or retained by the
23 ~~licensee;~~licensee.

24 (4) That a portion or all of such relics or artifacts may be sold or traded by the
25 Department.

26 Permits or licenses may be renewed upon or prior to expiration upon such terms as the
27 applicant and the Department may mutually agree. Holders of permits or licenses shall be
28 responsible for obtaining permission of any federal agencies having jurisdiction, including the
29 United States Coast Guard, the United States Department of the Navy and the United States
30 Army Corps of Engineers prior to conducting any salvaging operations.

31 (b) All photographs, video recordings, or other documentary materials of a derelict
32 vessel or shipwreck or its contents, relics, artifacts, or historic materials in the custody of any
33 agency of North Carolina government or its subdivisions shall be a public record pursuant to
34 G.S. 132-1. There shall be no limitation on the use of or no requirement to alter any such
35 photograph, video recordings, or other documentary material, and any such provision in any
36 agreement, permit, or license shall be void and unenforceable as a matter of public policy."

37 **SECTION 4.(b)** This section is effective when this act becomes law and applies to
38 any agreement entered into, or any permit or license issued or renewed, on or after that date.

39 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
40 law.