

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 765
Committee Substitute Favorable 4/20/93
Senate Judiciary II Committee Substitute Adopted 7/22/93

Short Title: Escheats/Retention of Molds.

(Public)

Sponsors:

Referred to:

April 6, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE AMENDMENTS TO THE LAW OF ESCHEATS AND UNCLAIMED PROPERTY AND TO LIMIT MOLDERS' OBLIGATIONS TO RETAIN DIES, MOLDS, FORMS, OR PATTERNS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-11 reads as rewritten:

"§ 116B-11. Property subject to custody and control of the State.

Personal property that is deemed unclaimed or abandoned under this Chapter is subject to the custody and control of the State if it is:

(1) Tangible. – Tangible and physically located within the State; or

(2) Intangible. – Intangible, and any of the following applies:

a. The last known address of the owner, as shown by the records of the holder, is within the ~~State; or State.~~

b. The last known address of the owner as shown by the records of the holder is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of the property, and ~~the either of the following applies:~~

1. The domicile of the holder is within the State; or State.

2. The intangible property was issued by this State, a political subdivision of this State, a business association, financial institution, or another person or entity,

- 1 incorporated, organized, created, or otherwise located in
2 this State.
- 3 c. No address of the owner appears on the records of the holder
4 and ~~the~~ either of the following applies:
- 5 1. The domicile of the holder is within the State; or State.
6 2. The intangible property was issued by this State, a
7 political subdivision of this State, a business association,
8 financial institution, or another person or entity,
9 incorporated, organized, created, or otherwise located in
10 this State.
- 11 d. No address of the owner appears on the records of the holder
12 and the domicile of the holder is not within the State, but it is
13 proved that the last known address of the owner is in the ~~State;~~
14 ~~or State.~~
- 15 e. ~~If the intangible property~~ It is a sum payable on a money order, a
16 traveler's check—check, or a similar written instrument, and
17 instrument and one of the following applies:
- 18 1. The instrument was purchased within the State, as shown
19 by the records of the ~~holder;~~ holder.
- 20 2. The place of purchase of the instrument is not shown in
21 the records of the holder and the holder's principal place
22 of business is within the ~~State; or State.~~
- 23 3. The place of purchase of the instruments, as shown by
24 the records of the holder, is within a jurisdiction, the
25 laws of which do not provide for the escheat or custodial
26 taking of the property, and the holder's principal place of
27 business is within the State."

28 Sec. 2. G.S. 116B-12 reads as rewritten:

- 29 "(a) Most Deposits and Funds. – Any demand, ~~savings—savings,~~ or matured time
30 ~~deposit—deposit, other than a certificate of deposit, in a financial institution, institution or~~
31 any funds paid toward the purchase of shares or ~~other—another~~ interest in a financial
32 institution shall be presumed abandoned if the financial institution is unable to locate
33 the owner and if, within the preceding five years, as to any demand deposit, or a savings
34 or time deposit or interest having a value of one thousand dollars (\$1,000) or less, or
35 within the preceding 10 years, as to any such savings or time deposit or interest having a
36 value of more than one thousand dollars (\$1,000), the owner has not:
- 37 (1) Increased or decreased the amount of the deposit, ~~shares—shares,~~ or
38 ~~claim,—claim~~ or presented to the holder the passbook, evidence of
39 ~~deposit—deposit,~~ or other appropriate record for the crediting of interest
40 or dividends;
- 41 (2) Corresponded in writing with the holder concerning the deposit, ~~shares~~
42 shares, or claim;
- 43 (3) Otherwise indicated an interest in the deposit, ~~shares—shares,~~ or claim as
44 evidenced by a writing on file with the holder; or

1 (4) Maintained another account at the same financial institution that
2 complies with (1), (2), or (3) above.

3 The financial institution shall make reasonable efforts to locate the owner and to
4 determine whether its records disclose a different address for the owner.

5 (a1) Certificates of Deposit. – A certificate of deposit issued by a financial
6 institution shall be presumed abandoned if the financial institution is unable to locate
7 the certificate's owner and if, within the 10-year period beginning on the initial maturity
8 date of the certificate, the owner did not take any of the actions listed in subsection (a)
9 of this section. The financial institution shall make the same efforts to locate a
10 certificate's owner as it would make under subsection (a) if the certificate were a
11 demand deposit.

12 (b) Written Instruments. – Any sum payable on a check certified in the State or
13 on any written instrument issued in the State on which a financial institution is directly
14 liable shall be presumed abandoned if, within 10 years from the date payable, or from
15 the date of issuance, if payable on demand, the owner has not:

16 (1) Negotiated the instrument;

17 (2) Corresponded in writing with the financial institution concerning it;
18 nor

19 (3) Otherwise indicated an interest by a writing on file with the financial
20 institution.

21 (c) Traveler's Checks. – Any sum payable on a traveler's check, money order or a
22 similar written instrument on which a financial institution or other business association
23 is directly liable shall be presumed abandoned if, within 15 years from the date payable,
24 or from the date of issuance, if payable on demand, the owner has not:

25 (1) Negotiated the instrument;

26 (2) Corresponded in writing with the financial institution or other business
27 association concerning it; nor

28 (3) Otherwise indicated an interest as indicated by a writing on file with
29 the financial institution or other business association.

30 (d) Safe Deposit Box. – Any funds or other personal property, tangible or
31 intangible, contained in or removed from a safe deposit box or other safekeeping
32 repository shall be presumed abandoned if the owner has not claimed the property
33 within the period established by G.S. 53-43.7 and shall be delivered to the State
34 Treasurer.

35 (e) Charges, Interest or Dividends on Abandoned Property. –

36 (1) ~~Reasonable service charges may be levied against deposits or accounts~~
37 ~~during the period prior to abandonment, provided those charges may~~
38 ~~charges, not to exceed the charges levied against similar active~~
39 ~~deposits or accounts.~~ accounts, may be imposed on inactive deposits or
40 accounts until the date on which the amount of the deposits or
41 accounts must be remitted to the Treasurer under G.S. 116B-31.

42 (2) ~~Interest or dividends due on any inactive deposits, accounts, funds~~
43 ~~funds, or shares presumed to be abandoned shall not be discontinued~~
44 ~~or diverted because of the inactivity or during the period prior to~~

1 ~~abandonment~~ shall be paid until the date on which the amount of the
2 ~~deposits, accounts, or funds, or the shares must be remitted or~~
3 ~~delivered to the Treasurer under G.S. 116B-31."~~

4 Sec. 3. G.S. 116B-13 reads as rewritten:

5 "**§ 116B-13. Property held by life insurers.**

6 (a) Funds Owed under a Policy or Contract. – Any funds held or owing by a life
7 insurer that are due and payable under any life or endowment insurance policy or
8 annuity contract which has matured or terminated shall be presumed abandoned if they
9 have not been claimed or paid within 10 years after becoming due or payable as
10 established from the insurer's records. Funds payable according to the insurer's records
11 are deemed due and payable although the policy or contract has not been surrendered as
12 required. The insurer shall make reasonable efforts to locate the insured or annuitant
13 and to determine whether its records disclose a different address for the insured or
14 annuitant.

15 (b) Presumption of Address of Beneficiary. – If a person other than the insured or
16 annuitant is entitled to the funds and no address of the person is known to the insurer or
17 if it is not definite and certain from the records of the insurer what person is entitled to
18 the funds, it is presumed that the last known address of the person entitled to the funds
19 is the same as the last known address of the insured or annuitant according to the
20 records of the insurer.

21 (c) Presumption of Maturity. – A life insurance policy not matured by actual
22 proof of the death of the insured is deemed to be matured, and the proceeds are deemed
23 to be due and payable if the policy was in force when the insured attained the limiting
24 age under the mortality table on which the reserve is based, unless the person appearing
25 entitled thereto has, within the preceding five years, assigned, readjusted or paid
26 premiums on the policy, negotiated a dividend check, made payments on a loan, or
27 corresponded in writing with the life insurer concerning the policy.

28 (d) Negotiable Instruments. – Any sum for the payment of a claim under an
29 insurance policy or contract, which sum is payable on a negotiable instrument on which
30 the insurer is the maker or drawer shall be presumed abandoned if, within ~~10~~ five years
31 from the date payable, or from the date of issuance, if payable on demand, the owner
32 has not:

- 33 (1) Negotiated the instrument;
- 34 (2) Corresponded in writing with the insurer concerning it; nor
- 35 (3) Otherwise indicated an interest by a writing on file with the insurer."

36 Sec. 4. Article 2 of Chapter 116B of the General Statutes is amended by
37 adding a new section to read:

38 "**§ 116B-22. Certain intangible property.**

39 (a) Property. – Securities, principal, interest and dividends accruing to the
40 securities, and other property that is subject to the custody and control of the State by
41 application of G.S. 116B-11(2)b.2. or (2)c.2. shall be presumed abandoned if, within the
42 shorter of the following periods after the date set by the issuer of the property for paying
43 or delivering the property to its owner, the owner has not claimed the property or
44 corresponded in writing with the holder:

- 1 (1) Five years.
 2 (2) The time period set by another state for taking custody of the property
 3 pursuant to that state's unclaimed property laws.
 4 (b) Income and Charges. – Any interest, dividends, or other earnings due on
 5 property presumed abandoned under subsection (a) of this section must be paid during
 6 the period prior to abandonment. Charges that are authorized by statute or by a contract
 7 may be deducted from the property during that period."

8 Sec. 5. G.S. 116B-28 reads as rewritten:

9 "**§ 116B-28. Notice by holders to owners required.**

10 (a) Insurers. – Every insurer required to file a report pursuant to G.S. 116B-29
 11 shall determine, prior to March 1 of each year, all owners who, as of the preceding
 12 December 31, appear entitled to property ~~of the~~ having a value of fifty dollars (\$50.00)
 13 or ~~more,~~ more and presumed abandoned under this ~~Chapter,~~ Chapter and, on or before
 14 March 1, shall mail, first class postage prepaid, a notice to the last known address of
 15 each ~~such~~ owner.

16 (b) Other Holders. – Every holder, other than insurers, required to file a report
 17 pursuant to G.S. 116B-29 shall determine, prior to November 1 of each year, all owners
 18 who, as of the preceding June 30, appear entitled to property ~~of the~~ having a value of
 19 fifty dollars (\$50.00) or ~~more,~~ more and presumed abandoned under this ~~Chapter,~~
 20 Chapter and, on or before November 1, shall mail, first class postage prepaid, a notice to
 21 the last known address of each ~~such~~ owner. A holder need not mail a notice to an owner
 22 for which the holder has no address.

23 (c) Contents. – Each notice required by this section shall ~~contain:~~ contain all of
 24 the following:

- 25 (1) A statement that, according to the records of the holder, property is
 26 being held to which the addressee appears entitled and the amount or
 27 description of the ~~property;~~ property.
 28 (2) The name and address of the person holding the property and any
 29 necessary information regarding changes of name and address of the
 30 ~~holder;~~ holder.
 31 (3) A statement ~~that, if that~~ unless the owner presents a satisfactory proof
 32 of claim is not presented by the owner to the holder by the following
 33 February 1, if the holder is not an insurer, or if the holder is an insurer,
 34 by the following November 1, October 1, if the holder is an insurer, the
 35 holder will send the property will be placed in the custody of the State to
 36 the Treasurer, to whom all further claims shall must be directed.

37 (d) Charges for Notices. – The holder shall be entitled to deduct from the
 38 property of each owner to whom notice is sent an amount not to exceed fifty cents (50¢)
 39 to defray the expense of mailing the notice. If the property is other than cash in the
 40 possession of the holder, the holder may submit to the Escheat Fund, with the
 41 certification ~~hereinafter provided for,~~ required by subsection (e) of this section, a sworn
 42 itemized statement of charges for notices mailed, not to exceed fifty cents (50¢) per
 43 notice, which shall be paid by the Escheat Fund within 30 days following receipt of the

1 statement. The Escheat Fund shall charge the accounts of the respective owners with
2 any charges so paid to holders.

3 (e) Certification of Mailing; Penalties; Right of Owners. – Every holder filing a
4 report pursuant to G.S. 116B-29 shall certify to the Treasurer therewith that the notices
5 required by subsections (a) and (b) of this section have been mailed to the last known
6 address of every owner named in the report. Failure or refusal to certify after written
7 demand by the Treasurer or filing a false certification shall be a misdemeanor,
8 punishable, upon conviction, by a fine of not less than five hundred dollars (\$500.00)
9 nor more than five thousand dollars (\$5,000) as the court, in its discretion, shall
10 determine. Any owner who has suffered loss or damage by reason of the failure of a
11 holder to mail the notice required by this section may recover actual loss or damage
12 from the holder in an appropriate action at law.

13 (f) Other Notice. – All holders shall make reasonable efforts to locate and
14 communicate with the owner prior to filing the report required by G.S. ~~116B-30~~ 116B-
15 29 in order to prevent abandonment from being presumed, including the exercise of due
16 diligence to determine whether ~~he~~ the holder possesses a different address for the owner.

17 (g) ~~Date of Notice. – The Department of Revenue may use the dates prescribed in~~
18 ~~subsection (a) of this section for insurers in mailing notices of unclaimed property."~~

19 Sec. 6. G.S. 116B-29 reads as rewritten:

20 "**§ 116B-29. Report of abandoned property by holder to Treasurer.**

21 (a) Reports to Treasurer. – Every ~~insurer holding property presumed abandoned~~
22 ~~under the provisions of one or more of the following sections, G.S. 116B-13, 116B-14,~~
23 ~~116B-16, 116B-17, 116B-20, or 116B-21, shall report and make payment to the~~
24 ~~Treasurer in accordance with G.S. 116B-31. Every other person holding funds or other~~
25 holder of property, tangible or intangible, presumed abandoned under this Chapter shall
26 report to the State Treasurer with respect to that property.

27 (b) Contents. – The report shall be verified and shall include:

- 28 (1) The name, if known, and last known address, if any, of each person
29 appearing from the records of the holder to be the owner of any
30 property of the value of fifty dollars (\$50.00) or more;
- 31 (2) In the case of unclaimed funds of an insurer, the full name of the
32 insured or annuitant and his last known address according to the
33 insurer's records;
- 34 (3) The nature and identifying number, if any, or description of the
35 property and the amount appearing from the records to be due, except
36 that items of value under fifty dollars (\$50.00) each may be reported in
37 the aggregate;
- 38 (4) A certification that the property reported has been held for the period
39 required by Article 2 of this Chapter; and
- 40 (5) Other information which the Treasurer prescribes by rule.

41 (c) Names of Prior Holders. – If the person holding property presumed
42 abandoned is a successor to other persons who previously held the property for the
43 owner, or if the holder has changed his name while holding the property, he shall file
44 with his report all prior known names and addresses of each holder of the property.

1 (d) Time of Filing. – The report of holders other than insurers shall be filed
2 before March 1 of each year and cover property presumed abandoned as of the prior
3 June 30, ~~but the 30.~~ The report of insurers shall be filed before ~~May 1~~ November 1 of
4 each year and cover property presumed abandoned as of the prior December 31. The
5 Treasurer, in his discretion, may postpone the reporting date for a period not exceeding
6 six months upon written request by any person required to file a report. ~~The Department~~
7 ~~of Revenue may use the dates prescribed in this subsection for insurers in filing reports of~~
8 ~~unclaimed property with the State Treasurer.~~

9 (e) Verification. – Verification, if made by a partnership, shall be executed by a
10 partner; if made by an unincorporated association or private corporation, by an officer;
11 and if made by a public corporation, by its chief fiscal officer. Notwithstanding the
12 above, any person authorized to bind the appropriate entity may make this verification.

13 (f) Negative Report. – If a holder receives a report form from the State Treasurer
14 and holds no abandoned property, then a negative report must be filed."

15 Sec. 7. G.S. 116B-31 reads as rewritten:

16 **"§ 116B-31. Payment or delivery of abandoned property.**

17 (a) ~~Insurers.—Every insurer~~ Due Date. – A holder shall remit or deliver to the
18 Treasurer ~~on or before December 1, with the report filed under G.S. 116B-29 any~~
19 ~~property deemed abandoned under the provisions of this Chapter and reported as~~
20 ~~required by G.S. 116B-29.~~ required to be included in the report. These remittances shall
21 be made payable to the Treasurer.

22 (b) ~~Other Holders.—All other holders shall remit or deliver to the Treasurer with~~
23 ~~the report required to be filed by G.S. 116B-29 any property deemed abandoned under~~
24 ~~the provisions of this Chapter.~~

25 (c) Tangible Personal Property. – Prior to the delivery of any tangible personal
26 property to the Treasurer, the holder shall report to the Treasurer the nature, condition
27 and approximate value of each article of such property. The Treasurer may determine
28 that delivery of specific tangible personal property is not in the best interest of the State,
29 either because the sum or value is too small or for other good reason. The Treasurer
30 shall notify the holder of the property of his determination and may refuse to accept
31 delivery and custody of that property."

32 Sec. 8. G.S. 116B-34 reads as rewritten:

33 **"§ 116B-34. Periods of limitation not a bar.**

34 The expiration of any period of time specified by ~~statutes~~ statutes, contract, or court
35 order, during which a claim may be made or an action or a proceeding may be
36 commenced or enforced to obtain payment of a claim for money or recovery of
37 property, shall not prevent the money or property from being presumed abandoned
38 property, nor affect any duty to file a report under this Chapter or to pay or deliver
39 abandoned property to the Treasurer."

40 Sec. 9. Article 13 of Chapter 66 of the General Statutes is amended by
41 adding a new section to read:

42 **"§ 66-67.3. Disposal of dies, molds, forms, and patterns.**

43 (a) Definitions. – The following definitions apply in this section:

44 (1) Customer. – Either of the following:

1 a. A person who causes or caused a molder to fabricate, cast, or
2 otherwise make a die, mold, form, or pattern.

3 b. A person who causes or caused a molder to use a die, mold,
4 form, or pattern to manufacture, assemble, or otherwise make a
5 product.

6 (2) Molder. – A tool or die maker or any other person who does either of
7 the following:

8 a. Fabricates, casts, or otherwise makes a die, mold, form, or
9 pattern.

10 b. Uses a die, mold, form, or pattern to manufacture, assemble, or
11 otherwise make a product.

12 (b) Ownership and Transfer. – A customer has all rights, title, and interest to a
13 die, mold, form, or pattern made or used by a molder on behalf of the customer unless
14 an agreement provides otherwise. If the customer does not claim possession of the die,
15 mold, form, or pattern from the molder within three years after the last time it is used,
16 the molder may choose to obtain all rights, title, and interest to the die, mold, form, or
17 pattern by operation of law unless a written agreement provides otherwise.

18 (c) Procedure. – If a molder chooses to have all rights, title, and interest to a die,
19 mold, form, or pattern transferred to the molder by operation of law, the molder must
20 send a written notice, by registered mail, return receipt requested, to the customer and to
21 any known secured creditor. The notice must state that the molder intends to terminate
22 the customer's rights, title, and interest in a mold, die, form, or pattern by having those
23 rights, title, and interest transferred to the molder by operation of law pursuant to this
24 section. The notice to the customer must be sent to the customer's last known address
25 or, if the customer has designated in writing a different address for receipt of the notice,
26 to the designated address. If a return receipt cannot be obtained for a notice that is
27 mailed, the molder may give notice by publication in accordance with G.S. 1A-1, Rule
28 4(j1). The rights, title, and interest in a die, mold, form, or pattern are transferred by
29 operation of law to a molder who gives notice as required by this section unless, within
30 30 days after the date the molder receives acknowledgement of the return receipt of a
31 notice that is mailed or 45 days after the date of first publication of a notice made by
32 publication, the customer takes possession of the die, mold, form, or pattern, or makes
33 other contractual arrangements with the molder for taking possession of or for storing
34 the die, mold, form, or pattern.

35 (d) Use Upon Transfer. – A molder to whom the rights, title, and interest in a die,
36 mold, form, or pattern is transferred by operation of law under this section may destroy
37 or otherwise dispose of the die, mold, form, or pattern as the molder's own property
38 without any risk of liability to the customer. The molder may not use the die, mold,
39 form, or pattern for any other purpose.

40 (e) Scope. – This section does not affect a right of a customer under federal
41 patent or copyright law or any state or federal law pertaining to unfair competition."

42 Sec. 10. Sections 1 through 8 of this act become effective December 1, 1993.
43 The remaining sections of this act are effective upon ratification. Sections 1 through 8
44 of this act apply to property held before, on, or after the effective date, regardless of

- 1 when the property became or becomes presumptively abandoned. Section 9 applies to
- 2 dies, molds, forms, or patterns made or used before, on, or after the effective date.