

## CHAPTER 103

## (HB 388)

AN ACT relating to the discharge of a security interest.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 186.045 is amended to read as follows:

- (1) ***A perfected security interest in a motor vehicle that has been satisfied by payment in full shall be deemed to have been discharged if one (1) or both of the following events has occurred:***
  - (a) ***The funds to pay in full and discharge the security interest have been provided to the secured party in the form of a cashier check, certified check, or wire transfer; or***
  - (b) ***The debt has been paid to a secured party who is no longer in existence or has failed to file the necessary documents to discharge the lien.***
- (2) ***If payment in full has been made under subsection (1)(a) of this section, the discharge of the lien shall be made not later than ten (10) days from the receipt of the payment.***
- (3) ***When a security interest has been paid in full and a termination statement or discharge has not been filed, the debtor may petition the Circuit Court in the county of the debtor's residence to order the discharge of the security interest. The debtor shall present written evidence to the Circuit Court that the security interest has been paid in full. If the evidence presented to the Circuit Court proves to the court's satisfaction that the security interest has been paid in full, the court shall order the county clerk to note the termination on the title and to remove the lien from the Automated Vehicle Information System (AVIS). A copy of the court's order shall immediately be sent to the county clerk in the county where the security interest was originally filed and the county clerk shall discharge the security interest and remove the lien information from AVIS in accordance with the provisions of this section.***
- (4) Whenever a security interest has been discharged, other than by proceedings under Part 6 of Article 9 of KRS Chapter 355 or similar proceedings, the secured party shall deliver a termination statement in the manner required by KRS 355.9-513 to the county clerk of the county in which the title lien statement was submitted. The secured party shall also deliver a copy of the termination statement to the debtor or the debtor's transferee. For failure to file the termination statement within the allowable time, the secured party shall be subject to the penalty provided in KRS 186.990(1). ***Except as provided in subsection (3) of this section,*** within five (5) days after the receipt of such documents, the county clerk shall note the filing in the index, in language prescribed by the cabinet, that the termination statement has been filed. Upon presentation of the owner's title showing ~~a~~<sup>a</sup> security interest to the county clerk where the termination statement was submitted, and with the copy of the termination statement submitted by the secured party, the clerk shall discharge the security interest by noting on ~~the~~<sup>the</sup> title that the termination statement has been filed and place the seal of the county clerk thereon. The clerk shall return the owner's title to the owner. The county clerk shall then file the termination statement in the place from which the title lien statement was removed. Termination statements ~~shall~~<sup>must</sup> be retained in the clerk's files for a period of two (2) years subsequent to the date of filing ~~a~~<sup>a</sup> statement, at which time they may be destroyed. The fee for these services are included in the provisions of KRS 186A.190.

- (5)~~(2)~~ Upon presentation of ~~an~~~~the~~ owner's title showing ~~a~~~~such~~ security interest to the county clerk of a county where the termination statement was not delivered, the county clerk ~~of that county~~ shall access the automated system to determine whether a record of termination of the security interest has been entered into the automated system by the county clerk where the termination statement was delivered by the secured party as provided in KRS 186A.210. If ~~a~~~~such~~ record of termination has been entered into the automated system, the county clerk of the county where the termination statement was not delivered, shall note the discharge of the security interest on the certificate of title by noting that the termination statement has been delivered, the county where it was delivered, and placing the seal of the county clerk thereon and may rely on the automated system to do so. If ~~a~~~~such~~ record of termination has not been entered into the automated system, ~~in no case shall~~ the county clerk of the county other than where the termination statement was delivered **shall not**~~;~~ make any notation upon the certificate of title that the security interest has been discharged or that a termination statement has been delivered to the county where the title lien statement was submitted.
- (6)~~(3)~~ Whenever any secured party repossesses a vehicle titled in **Kentucky**~~this Commonwealth~~, for which a security interest is in existence at the time of repossession, and disposes of ~~the~~~~such~~ vehicle pursuant to the provisions of KRS Chapter 355, he ~~shall~~~~must~~ present, within fifteen (15) days after such disposition, an affidavit in *a* form prescribed by the department and a termination statement or proof that ~~a~~~~such~~ termination statement has been filed. The new owner shall pay all applicable fees for titling and transferring the vehicle to the county clerk. Upon receipt of such documents, the county clerk who issued the lien shall then omit from the title he makes application for any information relating to the security interest under which the vehicle was repossessed or any security interest subordinate thereto. However, any security interest, as shown by such title which is superior to the one under which the vehicle was repossessed, ~~shall~~~~must~~ be shown on the title issued by the clerk unless the prior secured party has discharged ~~the~~~~such~~ security interest in ~~the~~~~such~~ clerk's office or proof of termination is submitted, ~~if the~~~~in case such~~ prior security interest was discharged in another clerk's office.
- (7)~~(4)~~ Whenever any vehicle brought into **Kentucky**~~this Commonwealth~~ is required to be titled ~~and the~~~~in this Commonwealth and such~~ vehicle is then subject to a security interest in another state as shown by the out-of-state documents presented to the clerk, the county clerk is prohibited from processing the application for title on the vehicle unless the owner obtains from the secured party a financing statement or title lien statement and presents same to the clerk along with the fees required in KRS 186A.190. The clerk shall note the out-of-state security interest on the certificate of title. This provision does not apply to vehicles required to be registered in Kentucky under forced registration provisions under KRS 186.145.
- (8)~~(5)~~ The fees provided for in this section are in addition to any state fee provided for by law.
- (9)~~(6)~~ Any person violating any provision of this section or any person refusing to surrender a certificate of title registration and ownership or transfer certificate upon request of any person entitled thereto, is subject to the penalties provided in subsection (1) of KRS 186.990.
- (10)~~(7)~~ The county clerk is prohibited from noting any security interest on a certificate of title on any vehicle subject to the provisions of KRS Chapter 186A if a certificate of title therefor

is presented to him which has all the spaces provided thereon for noting security interests fully exhausted. The owner *is responsible for ensuring*~~[must see to it]~~ that a discharge is noted on the certificate of title for each security interest and then a duplicate title as provided for in KRS 186A.180 *shall*~~[must]~~ be obtained from the clerk by the owner of the vehicle.

- (11)~~(8)~~ Security interests in vehicles sold to or owned by residents of other states *shall*~~[must]~~ be perfected in the state of *the*~~[such]~~ nonresident and repossession of the vehicle *shall*~~[must]~~ be taken pursuant to the laws of *that*~~[such]~~ state, unless:~~[the vehicle]~~
- (a) *The vehicle* is principally operated in Kentucky;~~[and]~~
  - (b) *The vehicle* is properly titled *in Kentucky*~~[herein]~~ under KRS Chapter 186A; and
  - (c) The security interest is authorized to be noted on the certificate of title by the county clerk under KRS Chapter 186A.

Section 2. KRS 186A.190 is amended to read as follows:

- (1) Except as provided in subsection (4) of this section, the perfection and discharge of a security interest in any property for which has been issued a Kentucky certificate of title shall be by notation on the certificate of title. The notation of the security interest on the certificate of title shall be in accordance with this chapter and shall remain effective from the date on which the security interest is noted on the certificate of title for a period of seven (7) years, or, in the case of a manufactured home, for a period of thirty (30) years, or until discharged under this chapter and KRS Chapter 186. The filing of a continuation statement within the six (6) months preceding the expiration of the initial period of a notation's effectiveness extends the expiration date for seven (7) additional years.
- (2) Except as provided in subsection (4) of this section, the notation of security interests relating to property required to be titled in Kentucky through the county clerk shall be done in the office of the county clerk of the county in which the debtor resides. If the debtor is other than a natural person, the following provisions govern the determination of the county of the debtor's residence:
  - (a) A partnership shall be deemed a resident of the county in which its principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;
  - (b) A limited partnership organized under KRS Chapter 362 shall be deemed a resident of the county in which its office is located, as set forth in its certificate of limited partnership or most recent amendment thereto filed pursuant to KRS Chapter 362. If such office is not located in this state, the debtor shall be deemed a nonresident for purposes of filing in this state;
  - (c) A limited partnership not organized under the laws of this state and authorized to do business in this state under KRS Chapter 362 shall be deemed a resident of the county in which the office of its process agent is located, as set forth in the designation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
  - (d) A corporation organized under KRS Chapter 271B, 273, or 274 or a limited liability company organized under KRS Chapter 275 shall be deemed a resident of the county

- in which its registered office is located, as set forth in its most recent corporate filing with the Secretary of State which officially designates its current registered office;
- (e) A corporation not organized under the laws of this state, but authorized to transact or do business in this state under KRS Chapter 271B, 273, or 274, or a limited liability company not organized under the laws of this state, but authorized to transact business in this state under KRS Chapter 275, shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent filing with the Secretary of State which officially designates its current registered office;
  - (f) A cooperative corporation or association organized under KRS Chapter 272 shall be deemed a resident of the county in which its principal business is transacted, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
  - (g) A cooperative corporation organized under KRS Chapter 279 shall be deemed a resident of the county in which its principal office is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
  - (h) A business trust organized under KRS Chapter 386 shall be deemed a resident of the county in which its principal place of business is located, as evidenced by the recordation of its declaration of trust in that county pursuant to KRS Chapter 386;
  - (i) A credit union organized under KRS Chapter 290 shall be deemed a resident of the county in which its principal place of business is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky; and
  - (j) Any other organization (defined in KRS 355.1-201) shall be deemed a resident of the county in which its principal place of business in this state is located, except that any limited partnership or corporation not organized under the laws of this state and not authorized to transact or do business in this state shall be deemed a nonresident for purposes of filing in this state. If the organization does not have a place of business in this state, then it shall be deemed a nonresident for purposes of filing in this state.

If the debtor does not reside in the Commonwealth, the notation of the security interest shall be done in the office of the county clerk in which the property is principally situated or operated. Notwithstanding the existence of any filed financing statement under the provisions of KRS Chapter 355 relating to any property registered or titled in Kentucky, the sole means of perfecting and discharging a security interest in property for which a certificate of title is required by this chapter is by notation on ~~the~~ property's certificate of title ***under the provisions of this chapter or in accordance with the provisions of subsection (3) of Section 1 of this Act.*** In other respects the security interest is governed by the provisions of KRS Chapter 355.

- (3) Except as provided in subsection (4) of this section, before ownership of property subject to a lien evidenced by notation on the certificate of title may be transferred, the transferor shall obtain the release of the prior liens in his name against the property being transferred. Once a security interest has been noted on the owner's title, ~~a~~ subsequent title ***shall not*** be issued by any county clerk free of ~~the~~ notation unless the owner's title is presented to the clerk and it has been noted thereon ~~+~~ that the security interest has been discharged. If this requirement is met, information relating to any security interest shown on the title as

having been discharged may be omitted from the title to be issued by the clerk. ***If information relating to the discharge of a security interest is presented to a clerk under the provisions of subsection (3) of Section 1 of this Act, the clerk shall discharge the security interest and remove the lien information from AVIS.***

- (4) Notwithstanding subsections (1), (2), and (3) of this section, a county clerk shall, following inspection of the vehicle by the sheriff, to determine that the vehicle has not been stolen, issue a new title to a vehicle, clear of all prior liens, to a person after he provides to the county clerk an affidavit devised by the Transportation Cabinet and completed by the person. In the affidavit, the person shall attest that:
- (a) He possesses the vehicle;
  - (b) A debt on the vehicle was owed him for more than thirty (30) days before he provided the notices required by paragraphs (c) and (d) of this subsection;
  - (c) More than fourteen (14) days before presenting the affidavit to the county clerk, the person attempted to notify the owner of the vehicle and all known lienholders, including those noted on the title, by certified mail, return receipt requested, of his name, address, and telephone number as well as his intention to obtain a new title, clear of all prior liens, unless the owner or a lienholder objected in writing;
  - (d) More than fourteen (14) days before presenting the affidavit to the county clerk, the person had published a legal notice stating his intention to obtain title to the vehicle. The legal notice appeared at least twice in a seven (7) day period in a newspaper published, and with a statewide circulation, in Kentucky. The legal notice stated:
    - 1. The person's name, address, and telephone number;
    - 2. The owner's name;
    - 3. The names of all known lienholders, including those noted on the title;
    - 4. The vehicle's make, model, and year; and
    - 5. The person's intention to obtain title to the vehicle unless the owner or a lienholder objects in writing within fourteen (14) days after the last publication of the legal notice; and
  - (e) Neither the owner nor a lienholder has objected in writing to the person's right to obtain title to the vehicle.
- (5) No more than two (2) active security interests may be noted upon a certificate of title.
- (6) In noting a security interest upon a certificate of title, the county clerk shall ensure that the certificate of title bears the lienholder's name, mailing address and zip code, the date the lien was noted, the notation number, and the county in which the security interest was noted. The clerk shall obtain the information required by this subsection for notation upon the certificate of title from the title lien statement described in KRS 186A.195 to be provided to the county clerk by the secured party.
- (7) For all the costs incurred in the notation and discharge of a security interest on the certificate of title, the county clerk shall receive the fee prescribed by KRS 64.012. The fee prescribed by this subsection shall be paid at the time of submittal of the title lien statement described in KRS 186A.195.

- (8) A copy of the application, certified by the county clerk, indicating the lien will be noted on the certificate of title shall be forwarded to the lienholder.

Section 3. KRS 186A.210 is amended to read as follows:

- (1) *When a security interest has been discharged under the provisions of subsection (3) of Section 1 of this Act, the county clerk shall discharge the security interest and remove the lien information from AVIS.*
- (2) *When*~~Whenever~~ a security interest ~~to a vehicle~~ has been discharged as provided by KRS 186.045~~(5)~~~~(2)~~, the county clerk of a county that is operating under automated procedures shall, upon receiving a termination statement, within five (5) days enter the record of termination into the automated system. The automated system shall be programmed to allow a county clerk in a county where the termination statement was not received to access the automated system to determine the county and date that the record of termination was entered into the automated system. The clerk of the county where the termination statement was received shall then release the lien recorded upon the title in the manner directed by the Department of Vehicle Regulation, and take such other action with respect to a termination as is directed by the Department of Vehicle Regulation.

Section 4. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

- (1) Motor vehicles sold to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;
- (2) Motor vehicles sold to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;
- (3) Motor vehicles which have been previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. ~~The~~~~Such~~ motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;
- (4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;
- (5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;
- (6) Motor vehicles previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;
- (7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;
- (8) Motor vehicles transferred to a corporation from a proprietorship or limited liability company, to a limited liability company from a corporation or proprietorship, or from a

corporation or limited liability company to a proprietorship, within six (6) months from the time that the business is incorporated, organized, or dissolved;

- (9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were previously registered in Kentucky;
- (10) Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (11) Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (12) The interest of a partner in a motor vehicle when other interests are transferred to him;
- (13) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(7)~~[(4)]~~. The reposessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle; and
- (14) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only.

Section 5. KRS 186.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 186.020, 186.030, 186.040, 186.045(5)~~[(2)]~~, 186.050, 186.056, 186.060, 186.110, 186.130, 186.140, 186.160, 186.170, 186.180(1) to (4)(a), 186.210, 186.230, or KRS 186.655 to 186.680 shall be guilty of a violation.
- (2) Any person who violates any of the provisions of KRS 138.465, 186.190, or 186.200 shall be guilty of a Class A misdemeanor.
- (3) A person who violates the provisions of KRS 186.450(4) or (5) shall be guilty of a violation. A person who violates any of the other provisions of KRS 186.400 to 186.640 shall be guilty of a Class B misdemeanor.
- (4) Any clerk or judge failing to comply with KRS 186.550(1) shall be guilty of a violation.
- (5) If it appears to the satisfaction of the trial court that any offender under KRS 186.400 to 186.640 has a driver's license but in good faith failed to have it on his or her person or misplaced or lost it, the court may, in its discretion, dismiss the charges against the defendant without fine, imprisonment, or cost.
- (6) Any person who steals a motor vehicle registration plate or renewal decal shall be guilty of a Class D felony. Displaying a canceled registration plate on a motor vehicle shall be prima facie evidence of guilt under this section.
- (7) Any person who violates the provisions of KRS 186.1911 shall be guilty of a Class A misdemeanor.
- (8) Any person who makes a false affidavit to secure a license plate under KRS 186.172 shall be guilty of a Class A misdemeanor.
- (9) Any person who violates any provision of KRS 186.070 or 186.150 shall be guilty of a Class A misdemeanor.

- (10) Any person who operates a vehicle bearing a dealer's plate upon the highways of this Commonwealth with intent to evade the motor vehicle usage tax or registration fee shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
- (11) Any person, other than a licensed dealer or manufacturer, who procures a dealer's plate with intent to evade the motor vehicle usage tax or registration fee shall be guilty of a Class D felony.
- (12) Any resident who unlawfully registers, titles, or licenses a motor vehicle in any state other than Kentucky with intent to evade the motor vehicle usage tax or the registration fee shall be guilty of a Class A misdemeanor if the amount of tax due is less than one hundred dollars (\$100), or of a Class D felony if the amount of tax due is more than one hundred dollars (\$100), and in addition shall be liable for all taxes so evaded with applicable interest and penalties.

Section 6. KRS 186A.205 is amended to read as follows:

Whenever a security interest is assigned as provided by KRS 186.045(4)~~[(1)]~~, the county clerk of a county that is operating under automated procedures shall, in addition to carrying out his requirements stated therein, enter the record of lien assignment into the automated system in the manner directed by the Department of Vehicle Regulation.

**Approved March 18, 2003**