

CHAPTER 8**(SB 74)**

AN ACT relating to security interests.

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's 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:
 - (a) Deliver an authenticated termination statement in the manner required by KRS 355.9-513 and 186A.195 to the county clerk of the county in which the title lien statement was submitted; *or*
 - (b) *Have a county clerk from another county submit by fax or other form of electronic communication available and acceptable to both sender and recipient, and verified verbally or by electronically assigned identification, as being from the sending clerk, and which is able to be copied to an electronic or paper file, on that county clerk's letterhead, an authenticated termination statement in the manner required by KRS 355.9-513 and 186A.195 to the county clerk of the county in which the title lien statement was submitted. The county clerk, upon receipt of the authenticated termination statement in the manner prescribed under this paragraph, shall verify the legitimacy of the document.*

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 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 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 be retained in the clerk's files for a period of two (2) years subsequent to the date of filing a statement, at which time they may be destroyed. The fee for these services are included in the provisions of KRS 186A.190.

- (5) Upon presentation of an owner's title showing a security interest to the county clerk of a county where the termination statement was not delivered, the county clerk 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 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 record of termination has not been entered into the automated system, 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) Whenever any secured party repossesses a vehicle titled in Kentucky, for which a security interest is in existence at the time of repossession, and disposes of the vehicle pursuant to the provisions of KRS Chapter 355, the secured party shall present, within fifteen (15) days after such disposition, the vehicle's license plate if the plate has not been retained by the previous owner, an affidavit in a form prescribed by the department, proof of notification of all interested parties pursuant to KRS 186A.190 and 355.9-611, and a termination statement or proof that a termination statement has been filed. The new owner shall pay to the county clerk all applicable fees for titling and transferring the vehicle into his or her name. 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 be shown on the title issued by the clerk unless the prior secured party has discharged the security interest in the clerk's office or proof of termination is submitted, if the prior security interest was discharged in another clerk's office.
- (7) Whenever any vehicle brought into Kentucky is required to be titled and the 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) The fees provided for in this section are in addition to any state fee provided for by law.
- (9) 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) 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 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 be obtained from the clerk by the owner of the vehicle.
- (11) Security interests in vehicles sold to or owned by residents of other states shall be perfected in the state of the nonresident and repossession of the vehicle shall be taken pursuant to the laws of that state, unless:
 - (a) The vehicle is principally operated in Kentucky;
 - (b) The vehicle is properly titled in Kentucky 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.
- (12) *A county clerk who accepts an authenticated termination statement and complies with the verification requirements of subsection (4)(b) of this section shall be held harmless from any liability arising from fraudulent termination statements.*

Signed by Governor April 1, 2016.