

CHAPTER 119

(HB 411)

AN ACT relating to security interests.

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

➔Section 1. KRS 186A.190 is amended to read as follows:

- (1) Except as provided in subsection (6)~~[(4)]~~ of this section and in KRS 355.9-311(4), 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 ***which shall be deemed to have occurred when the provisions of subsection (3) of this section have been complied with. Discharge of a security interest shall be by notation on the certificate of title.*** Notation shall be made by the entry of information required by subsection (9)~~[(7)]~~ of this section into the Automated Vehicle Information System~~, and shall be deemed to have occurred upon the entry~~. 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 ten (10) 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 five (5) additional years, commencing on the day the notation would have expired in the absence of the filing. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial notation.
- (2) ***A motor vehicle dealer, a secured party or its representative, an assignee of a retail installment contract lender, or a county clerk shall rely on a county of residence designated by the debtor on any approved, notarized state form utilized in lien titling or the title transfer process signed by the debtor. Reliance on the foregoing by the motor vehicle dealer, secured parties, and county clerk shall relieve those persons from liability to any third party claiming failure to comply with this section.***
- (3) Except as provided in subsection (6)~~[(4)]~~ of this section, the notation of security interests relating to property required to be titled ***under this chapter*** in Kentucky through the county clerk shall be done in the office of the county clerk of the county in which the debtor resides ***as determined by subsections (2) and (4) of this section. The security interest shall be deemed to be noted on the certificate of title and perfected, or deemed perfected at the time the security interest attaches as provided in KRS 355.9-203, if in compliance with KRS 186A.195(5), when a title lien statement:***
 - (a) ***Is received by the county clerk in the county in which residence of the debtor resides as determined under the provisions of this section together with the required fees, as designated by the debtor in the sworn statement;***
 - (b) ***Describes the titled vehicle, or vehicle to be titled, by year, model, make, and vehicle identification number;***
 - (c) ***Provides the name of the secured party, or a representative of the secured party, together with the additional information about the secured party required by subsection (9) of this section with reasonable particularity; and***
 - (d) ***Includes the date and time-stamped entry of the notation of the security interest by the county clerk of the required information in the Automated Vehicle Information System (AVIS), or its successor title processing system maintained by the Division of Motor Vehicle Licensing of the Transportation Cabinet.***
- (4) ***Except as provided in subsection (6) of this section,*** 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 or as defined in KRS 362.2-102(14) shall be deemed a resident of the county in which its principal place of business is located, as set forth in its

certificate of limited partnership or most recent amendment thereto filed pursuant to KRS Chapter 362 or 362.2-202. 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 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 Subtitle 6 of KRS Chapter 286 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 liability company, limited liability partnership, 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 KRS 186.045(3). In other respects the security interest is governed by the provisions of KRS Chapter 355.

~~(5)(3)~~ Except as provided in subsection ~~(6)(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 KRS 186.045(3), the clerk shall discharge the security interest and remove the lien information from AVIS.

~~(6)(4)~~ Notwithstanding subsections (1) ~~to (5)~~, ~~(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 ownership document to a vehicle, clear of all prior liens, to a person after he or she provides to the county

clerk an affidavit devised by the Transportation Cabinet and completed by the person. The ownership document presented as a result of this affidavit shall be in accordance with subsection ~~(7)(5)~~ of this section. In the affidavit, the affiant shall attest that:

- (a) The affiant or the agent of the affiant possesses the vehicle;
 - (b) Before he or she provided the notices required by paragraphs (c) and (d) of this subsection:
 - 1. A debt on the vehicle has been owed him or her for more than thirty (30) days;
 - 2. Within thirty (30) days of payment of damages by an insurance company and receipt by the current owner of the motor vehicle or lienholder of damages pursuant to a claim settlement which required transfer of the vehicle to the insurance company, the insurance company has been unable to obtain:
 - a. A properly endorsed certificate of title on the vehicle from the current owner; and
 - b. If applicable, any lien satisfactions; or
 - 3.
 - a. The vehicle was voluntarily towed or transported pursuant to a request of the current owner or an insurance company that a motor vehicle dealer, licensed as a used motor vehicle dealer and motor vehicle auction dealer, take possession of and store the motor vehicle in the regular course of business; and
 - b. Within forty-five (45) days of taking possession of the motor vehicle, the motor vehicle dealer has not been paid storage fees by the current owner or lienholder and has not been provided both a properly endorsed certificate of title and if applicable, any lien satisfactions;
 - (c) More than thirty (30) days before presenting the affidavit to the county clerk, the affiant attempted to notify the owner of the vehicle and all known lienholders, including those noted on the title, by certified mail, return receipt requested, or by a nationally recognized courier service, of his or her name, address, and telephone number as well as his or her intention to obtain a new title or salvage title, as applicable, clear of all prior liens, unless the owner or a lienholder objects in writing;
 - (d) More than fourteen (14) days before presenting the affidavit to the county clerk, the affiant had published a legal notice stating his or her intention to obtain title to the vehicle. The legal notice appeared at least twice in a seven (7) day period in a newspaper with circulation in the county. The legal notice stated:
 - 1. The affiant'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 affiant'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 affiant's right to obtain title to the vehicle.
- ~~(7)(5)~~ (a) If subsection ~~(6)(4)~~(b)1. of this section applies, the new ownership document shall be a title.
- (b) If subsection ~~(6)(4)~~(b)2. or 3. of this section applies, the new ownership document shall be a salvage title if the vehicle meets the requirements for a salvage title as stated in KRS 186A.520(1)(a).
- (c) If subsection ~~(6)(4)~~(b)2. or 3. of this section applies and the vehicle does not meet the requirements for a salvage title as stated in KRS 186A.520(1)(a), the new ownership document shall be a title.
- ~~(8)(6)~~ No more than two (2) active security interests may be noted upon a certificate of title.
- ~~(9)(7)~~ 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.

~~(10)(8)~~ 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.

~~(11)(9)~~ 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 2. KRS 186A.195 is amended to read as follows:

- (1) As used in this chapter, a title lien statement is a document to be submitted by the secured party to the county clerk. Upon submission of the title lien statement, the county clerk shall use the information contained therein to note the security interest on the certificate of title, in accordance with KRS 186A.190~~(9)(7)~~. The county clerk may make title lien statements available to the general public. However, public availability of such statements is not necessary or effective to perfect a security interest in property required to be registered or titled in accordance with this chapter.
- (2) If a title lien statement and the required fees accompany the application for first title of any property in the name of an owner, the county clerk shall enter the information required by KRS 186A.190~~(9)(7)~~ into the automated system so as to produce a certificate of title in Frankfort bearing in addition to any other required information, the information designated by KRS 186A.190~~(9)(7)~~. The clerk shall thereby produce, in accordance with design of the automated system, a certificate of registration, if required.
- (3) If a title lien statement and the required fees are not received at the time of application for first title of any property in the name of the owner due to owner's residency in another county, or if the form prescribed by KRS 186A.060 indicates a pending lien but the title lien statement does not accompany the application for title, the county clerk shall enter into the Automated Vehicle Information System (AVIS) the name and address of the lienholder and the county where the lien is to be noted or that a lien is pending. The clerk shall indicate a title is not to be issued until the lien has been noted and fees, according to KRS 186A.190, paid in the county of the owner's residence or in thirty (30) days. The county clerk shall then issue the registration. The county clerk in the county of the owner's residence shall, after receiving the title lien statement and fees contained in KRS 186A.190, enter into the Automated Vehicle Information System (AVIS) the date of lien notation and the notation number, thus enabling the system to produce the title in Frankfort.
- (4) Should a certificate of title be issued after the thirty (30) day period has expired without the notation of a security interest thereon, or should there be no provision made for a lien to be noted in the county of residence of the debtor within thirty (30) days and the title issued within that time, the secured party shall request from the debtor, and the debtor shall submit to the secured party, the certificate of title. The secured party shall submit the certificate of title along with the title lien statement to the county clerk of the county of the debtor's residence. The county clerk shall then enter the information required by KRS 186A.190~~(9)(7)~~ into the Automated Vehicle Information System (AVIS) and note on the certificate of title in the appropriate section the information described in that section. Following the notation of the appropriate information on the certificate of title, the county clerk shall return the title to the debtor.
- (5) The security interest noted on the certificate of title shall be deemed perfected at the time the security interest attaches (KRS 355.9-203) if the secured party tenders the required fees and submits a properly completed title lien statement and application for first title or, in the case of property previously titled in the name of its debtor, the certificate of title to the appropriate county clerk within thirty (30) days of attachment. Otherwise, the security interest shall be deemed perfected at the time that such fees are tendered and such documents are submitted to the appropriate county clerk.

➔Section 3. KRS 186A.200 is amended to read as follows:

- (1) With respect to a vehicle previously titled in the name of its debtor, the secured party shall, within thirty (30) days after execution of the security agreement, obtain the current certificate of title in the name of the debtor, with no more than one (1) prior lien indicated thereon, and present to the county clerk the certificate of title, which the secured party shall have the right to obtain from the debtor, together with the title lien statement and the required fees in KRS 186A.190 to the county clerk.
- (2) For failure to present both the title and title lien statement within the time prescribed by subsection (1) of this section, the secured party shall pay a penalty of two dollars (\$2) to the county clerk as a prerequisite for noting the security interest on the title.

- (3) The county clerk shall enter the information required by KRS 186A.190(9)~~((7))~~ into the automated system.
- (4) The county clerk shall record upon the title in the appropriate section the information designated by KRS 186A.190(9)~~((7))~~.

Signed by Governor April 24, 2020.