As Amended by Senate Committee

Session of 2011

SENATE BILL No. 120

By Committee on Ways and Means

2-7

AN ACT concerning requirements for the issuance of certificates of title for vessels; requiring notice, priority, release and surrender of security interests in vessels.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the Kansas vessel titling act.

Sec. 2. As used in the Kansas vessel titling act, unless the context clearly requires otherwise:

(a) “Director” means the director of vehicles, either acting directly or through officers or agents of the division of vehicles of the department of revenue.

(b) “Division” means the division of vehicles of the department of revenue.

(c) “Electronic certificate of title” means any electronic record of ownership, including any lien or liens that may be recorded or retained by the division in accordance with section 4, and amendments thereto.

(d) “Established place of business” means a building or structure, other than a building or structure, all or part of which is occupied or used as a residence, owned either in fee or leased and designated as an office or place to receive mail and keep records and conduct the routine of business.

(e) “New vessel dealer” means any vessel dealer who is a party to a vessel sales agreement with a vessel manufacturer, which vessel sales agreement authorizes the vessel dealer to sell, exchange or transfer new vessels or parts and accessories made or sold by such vessel manufacturer, and authorizes the vessel dealer to fulfill the warranty commitments of such vessel manufacturer.

(f) “Person” means any natural person, partnership, firm, corporation or association.

(g) “Supplemental place of business” means a business location other than that of the established place of business.

(h) “Used vessel dealer” means any person actively engaged in the
business of buying, selling or exchanging used vessels.

(i) “Vessel” means any watercraft designed to be propelled by gasoline, diesel or electric machinery, oars, paddles or wind action upon a sail for navigation on the water required to be numbered pursuant to K.S.A. 32-1110, and amendments thereto.

(j) “Vessel dealer” or “dealer” means any person who, for commission, money or other thing of value, is engaged in the business of:

(1) Buying, selling or offering or attempting to negotiate a sale of an interest in vessels;

(2) buying, selling or offering or attempting to negotiate a sale of an interest in vessels for other persons as an agent, middleman or negotiator; or

(3) bringing together buyers and sellers of vessels.

(k) “Vessel manufacturer” or “manufacturer” means any person who manufactures, assembles and sells new vessels, to vessel dealers for resale in this state, whether such person is located within or outside the state of Kansas.

(l) “Vessel sales agreement” means a contract between the manufacturer of vessels and a new vessel dealer, by which the dealer is entitled to purchase new vessels from the manufacturer for resale within this state.

Sec. 3. (a) The provisions of this section shall apply to any electronic certificate of title, except to the extent such provisions are made inapplicable by or are inconsistent with section 4, and amendments thereto, or with rules and regulations adopted pursuant to section 4, and amendments thereto.

(b) On and after the effective date of this act, upon the transfer or sale of any vessel by any person or dealer, the new owner thereof, within 30 days, inclusive of weekends and holidays, from the date of such transfer or sale, shall make application to the division for the issuance of a certificate of title evidencing the new owner’s ownership of such vessel. An application for certificate of title shall be made by the owner of the vessel, or the owner’s agent, upon a form furnished by the division, and it shall state all liens or encumbrances thereon and such other information as the director may require. Notwithstanding any other provision of this section, no certificate of title shall be issued for a vessel having any unreleased lien or encumbrance thereon, unless the transfer of vessel has been consented to in writing by the holder of
the lien or encumbrance. Such consent shall be in a form provided and
approved by the director. The county treasurer shall use reasonable
diligence in ascertaining whether the facts stated in such application are
true, and if satisfied that the applicant is the lawful owner of the vessel,
or otherwise entitled to have the certificate of title therefor issued in
such applicant’s name, shall so notify the division, who shall issue an
appropriate certificate of title.

(c) The director shall design a distinctive electronic certificate of
title to be issued to owners of vessels, so as to be distinguishable from
certificates of title issued to owners of other vehicles. The certificate of
title shall contain a statement of any liens or encumbrances which the
application discloses and shall provide such other information as the
director determines necessary and appropriate. The certificate of title
shall contain upon the reverse side a form for assignment of title to be
executed by the owner. This assignment shall contain a statement of all
liens or encumbrances on the vessel at the time of assignment. Only
one lien shall be taken or accepted on a vessel. When the ownership of
any vessel passes by operation of law or by repossession upon default
of a lease, security agreement or executory sales contract, the person
owning such vessel, upon furnishing satisfactory proof to the county
treasurer of such ownership, may procure a certificate of title to the
vessel. In addition to any other fee required for the issuance of a
certificate of title, any applicant obtaining a certificate of title for a
repossessed vessel shall pay a fee of $3.

(d) Dealers shall execute, upon delivery to the purchaser of every
new vessel, a manufacturer’s statement of origin stating the liens and
cumbrances thereon. Such statement of origin shall be delivered to
the purchaser at the time of delivery of the vessel or at a time agreed
upon by the parties, not to exceed 30 days, inclusive of weekends and
holidays. The agreement of the parties shall be executed on a form
provided and approved by the director. In the event delivery of title
cannot be made personally, the seller may deliver the manufacturer’s
statement of origin by restricted delivery mail to the address of the
purchaser shown on the purchase agreement. The manufacturer’s
statement of origin may include an attachment containing assignment
of such statement of origin on forms provided and approved by the
director. Upon the presentation to the division of a manufacturer’s
statement of origin, by a manufacturer or dealer for a new vessel, sold
in this state, a certificate of title shall be issued.
(e) The fee for each original certificate of title shall be $20. The
certificate of title shall be good for the life of the vessel while owned or
held by the original holder of the certificate of title.

(f) Upon sale and delivery to the purchaser of every vessel subject to
a purchase money security interest, as provided for in article 9 of
chapter 84 of the Kansas Statutes Annotated, and amendments thereto,
the dealer or secured party may complete a notice of security interest
and, when so completed, the purchaser shall execute the notice, in a
form prescribed by the director, describing the vessel and showing the
name and address of the secured party and of the debtor and such other
information as the director may require.

(g) The dealer or secured party may, within 30 days of the sale and
delivery, mail or deliver the notice of security interest, together with a
fee of $2.50, to the division. The notice of security interest shall be
retained by the division, once the division receives an application for a
certificate of title to the vessel and an electronic certificate of title is
issued. The electronic certificate of title shall indicate any security
interest in the vessel. Upon issuance of the electronic certificate of title,
the division shall mail or deliver confirmation of the receipt of the
notice of security interest, the date the electronic certificate of title is
issued and the security interest indicated, to the secured party at the
address shown on the notice of security interest. The proper completion
and timely mailing or delivery of a notice of security interest by a
dealer or secured party shall perfect a security interest in the vessel, as
referenced in K.S.A. 84-9-311, and amendments thereto, on the date of
such mailing or delivery. The county treasurer shall mail a copy of the
title application to the lienholder. For any vessel subject to a lien, the
county treasurer shall collect from the applicant a $1.50 service fee for
processing and mailing a copy of the title application to the lienholder.

(h) In the event of a sale or transfer of ownership of a vessel for
which a certificate of title has been issued, which certificate of title is in
the possession of the transferor at the time of delivery of the vessel, the
holder of such certificate of title shall endorse on the same an
assignment thereof, with warranty of title in a form prescribed by the
director and printed thereon, and the transferor shall deliver the same to
the buyer at the time of delivery to the buyer of the vessel, or at a time
agreed upon by the parties, not to exceed 30 days, inclusive of
weekends and holidays, after the time of delivery. The sale of vessel by
a vessel dealer without such delivery of an assigned certificate of title is
fraudulent and void, and it shall constitute a violation of the Kansas
vessel titling act. The agreement of the parties shall be executed on a
form provided and approved by the division. The requirements of this
subsection concerning delivery of an assigned title are satisfied if the
transferor mails to the transferee, by restricted delivery mail, the
assigned certificate of title within the 30 days, and if the transferor is a
dealer, as defined by section 2, and amendments thereto, such
transferor shall be deemed to have possession of the certificate of title
if the transferor has made application therefor to the division. The
buyer shall then present such assigned certificate of title to the division,
and a new certificate of title shall be issued to the buyer upon payment
of the fee of $20. If such vessel is sold to a resident of another state or
country, the dealer or person making the sale shall notify the division of
the sale and the division shall make notation thereof in the records of
the division. If any vessel is destroyed, dismantled or sold as junk, the
owner shall immediately notify the division by a form prescribed by the
division of vehicles, accompanied by a $10 processing fee.

(i) When a person acquires a security agreement on a vessel
subsequent to the issuance of the original title on such vessel, such
person shall require the holder of the certificate of title to surrender
such certificate of title and sign an application for a mortgage title in
such form as prescribed by the director. Upon such surrender, the
person shall immediately deliver the certificate of title, application and
a fee of $10 to the division. Upon receipt thereof the division shall
issue a new electronic certificate of title, showing the liens or
encumbrances so created. The delivery of the certificate of title,
application and fee to the division shall perfect such person’s security
interest in the vessel described in the certificate of title, as referenced in
K.S.A. 84-9-311, and amendments thereto. When a prior lienholder’s
name is removed from the electronic title, there must be satisfactory
evidence presented to the division that the lien or encumbrance has
been paid. When the indebtedness to a lienholder, whose name is
shown upon an electronic title, is paid in full, such lienholder, within 10
days after written demand by restricted mail, shall furnish to the holder
of the title a release of lien or execute such a release in the space
provided on the title. For failure to comply with such a demand, the
lienholder shall be liable to the holder of the title for $100 and also
shall be liable for any loss caused to the holder by such failure. When
the indebtedness to a lienholder, whose name is shown upon a title, is
collected in full, such lienholder, within 30 days, shall furnish notice to
the holder of title that such indebtedness has been paid in full and that
such title may be presented to the lienholder at any time for release of
lien.

(j) In the event of the sale of a vessel under the order of a court, the
officer conducting such sale shall issue to the purchaser a certificate
naming the purchaser and reciting the facts of the sale, which certificate
shall be prima facie evidence of the ownership of such purchaser for
the purpose of obtaining a certificate of title to such vessel. Any such
purchaser shall be allowed 30 days, inclusive of weekends and
holidays, from the date of sale to make application to the division for a
certificate of title.

(k) Any dealer who has acquired a vessel, the title for which was
issued under the laws of and in a state other than the state of Kansas,
shall not be required to retain a Kansas certificate of title therefor
during the time such vessel remains in such dealer’s possession and at
such dealer’s established or supplemental place of business for the
purpose of sale. Upon the sale of any such vessel, the dealer shall
deliver to the purchaser or transferee the certificate of title issued by the
other state within 30 days, properly endorsed and assigned to the
purchaser or transferee, together with an affidavit executed by the
dealer setting forth:

(1) That the dealer warrants to the purchaser or transferee and all
other persons who claim through the purchaser or transferee that, at the
time of the sale, transfer and delivery by the dealers, the vessel was free
and clear of all liens, mortgages and other encumbrances, except those
otherwise appearing on the title;

(2) the information shown on the title relating to all previous
assignments, including the names of all previous titleholders shown
thereon; and

(3) that the dealer has the right to sell and transfer the vessel.

Sec. 4. (a) On and after January 1, 2012, when an assignment of
title or manufacturer’s statement of origin indicates that there is a lien
or encumbrance on a vessel or if a notice of security interest has been
filed with the division, the division shall retain possession of such
certificate of title electronically and shall create an electronic certificate
of title. The provisions of section 3, and amendments thereto, shall
apply to an electronic certificate of title, except as otherwise provided
by statute or by rules and regulations adopted pursuant to subsection
(c).

(b) The division shall prescribe and provide suitable forms of applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out this act.

c) The secretary of revenue is hereby authorized to adopt rules and regulations necessary to carry out the provisions of this section.

Sec. 5. (a) All vessel certificate of title fees shall be paid to the county treasurer of the county in which the applicant for registration resides or has an office or principal place of business within this state.

(b) The county treasurer shall remit the fees collected, except for $2 retained pursuant to K.S.A. 8-145, and amendments thereto, together with the original copy of all applications, to the secretary of revenue. The secretary of revenue shall remit all such fees remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, except as provided in subsection (c).

(c) (1) Of each certificate of title fee collected and remitted to the secretary of revenue, $8 shall be remitted to the state treasurer who shall credit such $8 to the vessel title and registration fee fund.

(2) Of each certificate of title fee collected and remitted to the secretary of revenue, $6 shall be remitted to the state treasurer who shall credit such $6 to the vessel enforcement fee fund.

(3) Of each certificate of title fee collected and remitted to the secretary of revenue, $4 shall be remitted to the state treasurer who shall credit such $4 to the division of vehicles dealer licensing fund.

Sec. 6. There is hereby created in the state treasury the vessel title and registration fee fund. All moneys credited to the vessel title and registration fee fund shall be used by the department of revenue only for the purpose of funding the administration and operation, including equipment, associated with the issuance of vessel titles. All expenditures from the vessel title and registration fee fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of revenue.

Sec. 7. There is hereby created in the state treasury the vessel enforcement fee fund. All moneys credited to the vessel enforcement fee fund shall be used by the department of wildlife and parks only for the purpose of funding the administration and operation, including
equipment, associated with the enforcement of the requirement that vessels be titled. All expenditures from the vessel enforcement fee fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of wildlife and parks.

Sec. 8. There is hereby created in the state treasury the vessel dealer licensing fee fund. All moneys credited to the vessel dealer licensing fee fund shall be used by the department of revenue only for the purpose of funding the administration and operation, including equipment, associated with the issuance of vessel dealer licenses. All expenditures from the vessel dealer licensing fee fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of revenue.

Sec. 9. (a) No person shall engage in the business of a vessel dealer unless such person has complied with the applicable provisions of the Kansas vessel titling act. The director shall issue the licenses provided for herein and shall have supervision over the licensees hereunder in respect to all the provisions of the act.

(b) No vessel dealer shall engage in business in this state without obtaining a license therefor.

(c) No vessel manufacturer or factory representative shall engage in business in this state without a license as required by this act, regardless of whether or not an office or other place of business is maintained in this state for the purpose of conducting such business.

(d) An application for a license shall be made to the director and shall contain the information provided for by this section, together with such other information as may be deemed reasonable and pertinent, and shall be accompanied by the required fee. The director may require in the application, or otherwise, information relating to the applicant’s solvency, financial standing or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business, all of which may be considered by the director in determining the fitness of the applicant to engage in business as set forth in this section. The director may require the applicant for licensing to appear at such time and place as may be designated by the director for examination to enable the director to determine the accuracy of the facts contained in the written application, either for initial licensure or renewal thereof. Every application under
this section shall be verified by the applicant.

(e) All licenses shall be granted or refused within 30 days after the application is received by the director. All licenses shall expire, unless previously suspended or revoked, on December 31 of the calendar year for which they are granted, except that where a complaint respecting the cancellation, termination or nonrenewal of a sales agreement is in the process of being heard, no replacement application shall be considered until a final order is issued by the director. Applications for renewals, received by the director after February 15 shall be considered as new applications.

(f) New and used vessel dealers license fees for each calendar year or any part thereof, shall be $75.

(g) The license of all persons licensed under the provisions of the Kansas vessel titling act shall state the address of the established place of business, office or branch and must be conspicuously displayed therein. If such address is changed, the director shall endorse the change of address on the license without charge.

(h) No license shall be issued by the director to any person to act as a new or used dealer, unless the applicant maintains an established place of business which has been inspected and approved by the division.

(i) Dealers required under the provisions of this act to maintain an established place of business shall own or have leased and use sufficient lot space at the established place of business and any supplemental place of business to display the dealer’s inventory of vessels.

(j) A sign with durable lettering at least 10 inches in height and easily visible from the street identifying the established place of business shall be displayed by every dealer. Notwithstanding the other provisions of this subsection, the height of lettering of the required sign may be less than 10 inches as necessary to comply with local zoning regulations.

(k) If the established or supplemental place of business or lot is zoned, approval must be secured from the proper zoning authority and proof that the use complies with the applicable zoning law, ordinance or resolution must be furnished to the director by the applicant for licensing.

(l) An established or supplemental place of business, otherwise meeting the requirements of the Kansas vessel titling act, may be used
by a dealer to conduct more than one business as long as suitable space
and facilities exist therein to properly conduct the business of a vessel
dealer.

(m) If a supplemental place of business is not operated on a
continuous, year-round basis, the dealer shall give the department 15
days’ notice as to the dates on which the dealer will be engaged in
business at the supplemental place of business.

(n) Any dealer selling, exchanging or transferring or causing to be
sold, exchanged or transferred new vessels in this state must
satisfactorily demonstrate to the director that such dealer has a bona
fide vessel sales agreement with the manufacturer to sell, exchange or
transfer the same or to cause it to be sold, exchanged or transferred.

Sec. 10. Except as hereinafter provided, every person licensed as a
vessel dealer shall:

(a) On or before the 20th day of each month, file a monthly report,
on a form prescribed and furnished by the division, listing all sales or
transfers, except sales or transfers by a manufacturer to a dealer of new
or used vessels, including the name and address of the purchaser or
transferee, date of sale, the serial or identification number of the vessel,
and such other information as the division may require.

(b) Make available during regular business hours to any employee of
the division for the purpose of investigation or inspection, all records
concerning vessels purchased, sold or exchanged during the preceding
12 months, including certificates of title on all vessels owned by the
dealership.

(c) Whenever a dealer sells or otherwise disposes of such dealer’s
business, or for any reason suspends or goes out of business as a dealer,
such dealer shall notify the division and the division upon receipt of
such notice shall cancel the dealer’s license, except that such dealer
may, upon payment of 50% of the annual fee to the division, have the
license and dealer license plates assigned to the purchaser of the
business.

Sec. 11. (a) A license may be denied, suspended or revoked or a
renewal may be refused by the director on any of the following
grounds:

(1) Proof of financial unfitness of the applicant;
(2) material false statement in an application for a license;
(3) filing a materially false or fraudulent tax return as certified by
the director of taxation;
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(4) negligently failing to comply with any applicable provision of the Kansas vessel titling act or any applicable rule or regulation adopted pursuant thereto;

(5) knowingly defrauding any retail buyer to the buyer’s damage;

(6) negligently failing to perform any written agreement with any buyer;

(7) knowingly making a fraudulent sale or transaction;

(8) knowingly engaging in false or misleading advertising;

(9) willful misrepresentation, circumvention or concealment, through a subterfuge or device, of any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer;

(10) negligent use of fraudulent devices, methods or practices in contravention of law with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;

(11) knowingly violating any law relating to the sale, distribution or financing of vessels;

(12) has failed or refused to permit an agent of the division, during the licensee’s regular business hours, to examine or inspect such dealer’s records pertaining to titles and purchases and sales of vessels;

(13) has demonstrated that such person is not of good character and reputation in the community in which the dealer resides;

(14) has, within five years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violations of any law of any state or the United States in connection with such person’s operation as a dealer or salesperson; or

(15) failure to provide adequate proof of ownership for vessels in the dealer’s possession.

(b) The director may deny the application for a license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(c) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party
as an individual. Each licensee shall be responsible for the acts of its salespersons or representatives while acting as its agents.

(d) When any licensee is found to be allegedly violating any of the applicable provisions of the Kansas vessel titling act, or any order or rule and regulation adopted pursuant thereto, the director, upon the director’s own motion or upon complaint, may commence a hearing against the licensee, which hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(e) Any person who is found to have violated any applicable provisions of the Kansas vessel titling act, any rule and regulation adopted pursuant thereto or any applicable order of the director shall be subject to a civil penalty of not less than $50 nor more than $1,000 for each violation or such person’s license may be suspended or revoked, or both a civil penalty and a license suspension or revocation may be imposed.

(f) Any licensee or other person aggrieved by a final order of the director may appeal to the district court as provided by the act for judicial review and civil enforcement of agency actions.

(g) The revocation or suspension of a manufacturer’s license may be limited to one or more municipalities or counties or any other defined trade area.

Sec. 12. (a) The secretary of revenue shall adopt the necessary rules and regulations to implement the provisions of this act.

Sec. 13. This act shall take effect and be in force on and after January 1, 2012, and its publication in the statute book.