

CHAPTER 79
HOUSE BILL No. 2604

AN ACT concerning watercraft, relating to dealers; requiring licensing; providing for dealer certificates of number; amending K.S.A. 32-1102 and 32-1112 and K.S.A. 2003 Supp. 32-1172 and repealing the existing sections.

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

Section 1. K.S.A. 32-1102 is hereby amended to read as follows: 32-1102. As used in article 11 of chapter 32 of the Kansas Statutes Annotated and amendments thereto, unless the context clearly requires a different meaning:

(a) "Vessel" means any watercraft designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water.

(b) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion.

(c) "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(d) "Waters of this state" means any waters within the territorial limits of this state.

(e) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(f) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(g) "Department" means the Kansas department of wildlife and parks.

(h) "Secretary" means the secretary of wildlife and parks.

(i) "Length" means the length of the vessel measured from end to end over the deck excluding sheer.

(j) "Operator" means the person who operates or has charge of the navigation or use of a motorboat or a vessel.

(k) "Undocumented vessel" means a vessel which is not required to have, and does not have, a valid marine document issued by the United States coast guard or federal agency successor thereto.

(l) "Reportable boating accident" means an accident, collision or other casualty involving a vessel subject to this act which results in loss of life, injury sufficient to require first aid or medical attention, or actual physical damage to property, including a vessel, in excess of an amount established by rules and regulations adopted by the secretary in accordance with K.S.A. 32-805 and amendments thereto.

(m) "Marine sewage" means any substance that contains any of the waste products, excrement or other discharges from the bodies of human beings or animals, or foodstuffs or materials associated with foodstuffs intended for human consumption.

(n) "Marine toilet" means any latrine, head, lavatory or toilet which is intended to receive marine sewage and which is located on or in any vessel.

(o) "Passenger" means any individual who obtains passage or is carried in or on a vessel.

(p) "Sail board" means a surfboard using for propulsion a free sail system comprising one or more swivel-mounted rigs (mast, sail and booms) supported in an upright position by the crew and the wind.

(q) "Dealer" means any person ~~engaged wholly or in part in the business of manufacturing, constructing, assembling, selling, offering for sale, exchanging, buying for the purpose of resale or taking in trade for the purpose of resale two or more vessels within a 12-month period who:~~

(1) *For a commission or with an intent to make a profit or gain of money or other thing of value, sells, barter, exchanges, leases or rents with the option to purchase, offers, attempts to sell, or negotiates the sale of any vessel, whether or not the vessel is owned by such person;*

(2) *maintains an established place of business with sufficient space to display vessels at least equal in number to the number of dealer certificates of number the dealer has been assigned; and*

(3) *maintains signage easily visible from the street identifying the established place of business.*

(r) “Demonstrate” means to operate a vessel on the waters of this state for the purpose of selling, trading, negotiating or attempting to negotiate the sale or exchange of interests in new or used vessels or for the purpose of testing the design or operation of a vessel. ~~Demonstrate does not include operation of a vessel on the waters of this state for personal or recreational purposes by a dealer or a member of the dealer’s family, or by an employee of a dealer or a member of the employee’s family.~~

(s) “Sailboat” means any vessel, other than a sail board, that is designed to be propelled by wind action upon a sail for navigation on the water.

New Sec. 2. (a) No dealer of vessels shall be eligible to obtain dealer certificates of number pursuant to K.S.A. 32-1112, and amendments thereto, unless such dealer holds a dealer’s license issued by the secretary. The application for a dealer’s license shall be made to the secretary and shall contain such information as the secretary deems reasonable and pertinent for the enforcement of the provisions of this section. The application shall be accompanied by the fee required under K.S.A. 32-1172, and amendments thereto.

(b) A dealer’s license shall be granted or refused within 30 days after the application is received by the secretary. The license shall expire, unless previously suspended or revoked, on December 31 of the calendar year for which the license is granted. Any application for renewal received by the secretary after February 15 shall be considered as a new application.

(c) The secretary may deny, suspend, revoke or refuse renewal of a person’s dealer’s license if the person has:

(1) Made a material false statement in an application for a dealer’s license;

(2) filed a materially false or fraudulent tax return as certified by the director of taxation;

(3) knowingly used or permitted the use of a dealer certificate of number contrary to law;

(4) failed to notify the secretary within 10 days of any dealer certificate of number that has been lost, stolen, mutilated or destroyed; or

(5) has failed or refused to surrender the dealer’s license or dealer’s certificates of number to the secretary or the secretary’s agent upon demand.

(d) The secretary may deny the application for the 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.

(e) 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 any of the licensee’s salespersons, representatives or employees while acting as the licensee’s agent.

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

Sec. 3. K.S.A. 32-1112 is hereby amended to read as follows: 32-1112. ~~(a) A dealer of vessels of a type otherwise required to be numbered hereunder, upon application to the secretary, upon forms prescribed by the secretary, may obtain certificates of number for use in the demonstrating of such vessel upon payment of the testing or demonstration boat registration fee prescribed pursuant to K.S.A. 32-1172 and amendments thereto. The certificate of number so issued must accompany the vessel while being tested or demonstrated. The number assigned by the certificate shall be temporarily placed on the vessel tested or demonstrated.~~
(a) A licensed dealer demonstrating, displaying or exhibiting on the waters of this state any vessel of a type required to be numbered under the laws of this state may obtain from the department, in lieu of obtaining a cer-

tificate of number for each such vessel, dealer certificates of number for use in demonstrating, displaying or exhibiting any such vessel. No such dealer certificate of number shall be issued by the department except upon application to the secretary upon forms prescribed by the secretary and upon payment of the required fees. The dealer certificate of number must accompany the vessel and the number assigned by such dealer certificate must be temporarily placed on the vessel while it is being demonstrated, displayed or exhibited on the waters of this state. During the calendar year for which issued, such dealer certificate may be transferred from one such vessel to another owned or operated by such dealer. Such dealer certificate of number may be used in lieu of a regular certificate of number for the purposes of demonstrating, displaying or exhibiting vessels held in inventory of such dealer. Such dealer certificate of number may also be used on such dealer's service vessel, or substitute vessels owned by the dealer but loaned to a customer when the dealer is repairing such customer's vessel.

(b) No dealer in vessels of a type required to be numbered under the laws of this state shall cause or permit any such vessel owned by such dealer to be on the waters of this state unless the original dealer certificate of number accompanies the vessel and the number assigned by such dealer certificate is temporarily placed on the vessel as required by this section. A dealer who wishes to operate or allow operation of more than one vessel simultaneously on the waters of this state shall apply for additional dealer certificates as provided by the secretary.

(c) No dealer certificate of number shall be issued to any dealer unless such dealer at the time of making application therefor exhibits to the secretary or the secretary's agent a receipt showing that the applicant has paid all personal property taxes and sales tax levied against such dealer for the preceding year, including taxes assessed against vessels of such dealer which were assessed as stock in trade, or unless the dealer exhibits satisfactory evidence that the dealer had no taxable personal property for the preceding year. If application for registration is made before June 21, the receipt may show payment of only $\frac{1}{2}$ of the preceding year's taxes.

(d) To determine the number of dealer certificates of number a dealer needs, the secretary may base the decision on the dealer's past sales, inventory and any other pertinent factors as the secretary may determine. After the end of the first year of licensure as a dealer, not more than one dealer certificate of number shall be issued to any dealer who has not reported to the secretary the sale of at least five vessels in the preceding year. There shall be no refund of fees for dealer certificates of number in the event of suspension, revocation or voluntary cancellation of such certificates of number.

(e) Any dealer of vessels may authorize use of dealer certificates of number assigned to such dealer by the following:

- (1) The licensed dealer and such dealer's spouse;
- (2) any employee of such dealer when the use thereof is directly connected to a particular business transaction of such dealer; and
- (3) the dealer's customer when operating a vessel in connection with negotiations to purchase such vessel or during a demonstration of such vessel, as stated in a written agreement between the dealership and the customer, with such required information as deemed necessary by the secretary.

(f) Except as hereinafter provided, every dealer of vessels shall:

(1) On or before the 20th day of the month following the end of a calendar quarter, file a report for such quarter report, on a form prescribed and furnished by the secretary, listing all sales or transfers, 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 secretary may require. The department of wildlife and parks shall make a copy of the report available to the department of revenue.

(2) 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 secretary and return the dealer's license and dealer certificates of number and, upon receipt of such notice, license and certificates of number, the secretary shall cancel the dealer's certificates of number, except that such dealer, upon payment of 50% of the annual dealer's license fee to the secretary, may have the license and dealer certificates of number assigned to the purchaser of the business.

(g) The secretary shall adopt, in accordance with K.S.A. 32-805

and amendments thereto, rules and regulations for the administration of provisions of this section, including but not limited to ~~testing or demonstration boat registrations~~, dealer *certificate of number* applications and renewals, temporary placement of numbers and possession of *dealer* certificates of number.

Sec. 4. K.S.A. 2003 Supp. 32-1172 is hereby amended to read as follows: 32-1172. The secretary is authorized to adopt, in accordance with K.S.A. 32-805 and amendments thereto, rules and regulations fixing the amount of fees for the following items, subject to the following limitations and subject to the requirement that no such rules and regulations shall be adopted as temporary rules and regulations:

Dealer certificate of number: maximum \$50

Additional dealer certificates: maximum \$10

Dealer license: maximum \$50

Duplicate registrations, certificates or permits: maximum \$10

~~Testing or demonstration boat registrations: maximum \$50~~

~~Additional registrations: maximum \$10~~

Vessel registrations: maximum \$30

Water event permits: maximum \$50

Special departmental services, materials or supplies: no maximum

Sec. 5. K.S.A. 32-1102 and 32-1112 and K.S.A. 2003 Supp. 32-1172 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after January 1, 2005, and its publication in the statute book.

Approved April 14, 2004.
