

As Amended by Senate Committee

Session of 2011

SENATE BILL No. 120

By Committee on Ways and Means

2-7

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

4

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

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

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

10 (a) "Director" means the director of vehicles, either acting directly
11 or through officers or agents of the division of vehicles of the
12 department of revenue.

13 (b) "Division" means the division of vehicles of the department of
14 revenue.

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

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

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

29 (f) "Person" means any natural person, partnership, firm,
30 corporation or association.

31 (g) "Supplemental place of business" means a business location
32 other than that of the established place of business.

33 (h) "Used vessel dealer" means any person actively engaged in the

1 business of buying, selling or exchanging used vessels.

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

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

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

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

14 (3) bringing together buyers and sellers of vessels.

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

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

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

28 (b) On and after the effective date of this act, upon the transfer or
29 sale of any vessel by any person or dealer, the new owner thereof,
30 within 30 days, inclusive of weekends and holidays, from the date of
31 such transfer or sale, shall make application to the division for the
32 issuance of a certificate of title evidencing the new owner’s ownership
33 of such vessel. An application for certificate of title shall be made by
34 the owner of the vessel, or the owner’s agent, upon a form furnished by
35 the division, and it shall state all liens or encumbrances thereon and
36 such other information as the director may require. Notwithstanding
37 any other provision of this section, no certificate of title shall be issued
38 for a vessel having any unreleased lien or encumbrance thereon, unless
39 the transfer of vessel has been consented to in writing by the holder of

1 the lien or encumbrance. Such consent shall be in a form provided and
2 approved by the director. The county treasurer shall use reasonable
3 diligence in ascertaining whether the facts stated in such application are
4 true, and if satisfied that the applicant is the lawful owner of the vessel,
5 or otherwise entitled to have the certificate of title therefor issued in
6 such applicant's name, shall so notify the division, who shall issue an
7 appropriate certificate of title.

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

25 (d) Dealers shall execute, upon delivery to the purchaser of every
26 new vessel, a manufacturer's statement of origin stating the liens and
27 encumbrances thereon. Such statement of origin shall be delivered to
28 the purchaser at the time of delivery of the vessel or at a time agreed
29 upon by the parties, not to exceed 30 days, inclusive of weekends and
30 holidays. The agreement of the parties shall be executed on a form
31 provided and approved by the director. In the event delivery of title
32 cannot be made personally, the seller may deliver the manufacturer's
33 statement of origin by restricted delivery mail to the address of the
34 purchaser shown on the purchase agreement. The manufacturer's
35 statement of origin may include an attachment containing assignment
36 of such statement of origin on forms provided and approved by the
37 director. Upon the presentation to the division of a manufacturer's
38 statement of origin, by a manufacturer or dealer for a new vessel, sold
39 in this state, a certificate of title shall be issued.

1 (e) The fee for each original certificate of title shall be \$20. The
2 certificate of title shall be good for the life of the vessel while owned or
3 held by the original holder of the certificate of title.

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

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

30 (h) In the event of a sale or transfer of ownership of a vessel for
31 which a certificate of title has been issued, which certificate of title is in
32 the possession of the transferor at the time of delivery of the vessel, the
33 holder of such certificate of title shall endorse on the same an
34 assignment thereof, with warranty of title in a form prescribed by the
35 director and printed thereon, and the transferor shall deliver the same to
36 the buyer at the time of delivery to the buyer of the vessel, or at a time
37 agreed upon by the parties, not to exceed 30 days, inclusive of
38 weekends and holidays, after the time of delivery. The sale of vessel by
39 a vessel dealer without such delivery of an assigned certificate of title is

1 fraudulent and void, and it shall constitute a violation of the Kansas
2 vessel titling act. The agreement of the parties shall be executed on a
3 form provided and approved by the division. The requirements of this
4 subsection concerning delivery of an assigned title are satisfied if the
5 transferor mails to the transferee, by restricted delivery mail, the
6 assigned certificate of title within the 30 days, and if the transferor is a
7 dealer, as defined by section 2, and amendments thereto, such
8 transferor shall be deemed to have possession of the certificate of title
9 if the transferor has made application therefor to the division. The
10 buyer shall then present such assigned certificate of title to the division,
11 and a new certificate of title shall be issued to the buyer upon payment
12 of the fee of \$20. If such vessel is sold to a resident of another state or
13 country, the dealer or person making the sale shall notify the division of
14 the sale and the division shall make notation thereof in the records of
15 the division. If any vessel is destroyed, dismantled or sold as junk, the
16 owner shall immediately notify the division by a form prescribed by the
17 division of vehicles, ~~accompanied by a \$10 processing fee.~~

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

1 collected in full, such lienholder, within 30 days, shall furnish notice to
2 the holder of title that such indebtedness has been paid in full and that
3 such title may be presented to the lienholder at any time for release of
4 lien.

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

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

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

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

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

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

1 (c).
2 (b) The division shall prescribe and provide suitable forms of
3 applications, certificates of title, notices of security interests, and all
4 other notices and forms necessary to carry out this act.
5 (c) The secretary of revenue is hereby authorized to adopt rules and
6 regulations necessary to carry out the provisions of this section.
7 Sec. 5. (a) All vessel certificate of title fees shall be paid to the
8 county treasurer of the county in which the applicant for registration
9 resides or has an office or principal place of business within this state.
10 (b) The county treasurer shall remit the fees collected, except for \$2
11 retained pursuant to K.S.A. 8-145, and amendments thereto, together
12 with the original copy of all applications, to the secretary of revenue.
13 The secretary of revenue shall remit all such fees remitted to the state
14 treasurer in accordance with the provisions of K.S.A. 75-4215, and
15 amendments thereto. Upon receipt of each such remittance, the state
16 treasurer shall deposit the entire amount in the state treasury to the
17 credit of the state general fund, except as provided in subsection (c).
18 (c) (1) Of each certificate of title fee collected and remitted to the
19 secretary of revenue, \$8 shall be remitted to the state treasurer who
20 shall credit such \$8 to the vessel title and registration fee fund.
21 (2) Of each certificate of title fee collected and remitted to the
22 secretary of revenue, \$6 shall be remitted to the state treasurer who
23 shall credit such \$6 to the vessel enforcement fee fund.
24 (3) Of each certificate of title fee collected and remitted to the
25 secretary of revenue, \$4 shall be remitted to the state treasurer who
26 shall credit such \$4 to the division of vehicles dealer licensing fund.
27 Sec. 6. There is hereby created in the state treasury the vessel title
28 and registration fee fund. All moneys credited to the vessel title and
29 registration fee fund shall be used by the department of revenue only
30 for the purpose of funding the administration and operation, including
31 equipment, associated with the issuance of vessel titles. All
32 expenditures from the vessel title and registration fee fund shall be
33 made in accordance with appropriation acts, upon warrants of the
34 director of accounts and reports issued pursuant to vouchers approved
35 by the secretary of the department of revenue.
36 Sec. 7. There is hereby created in the state treasury the vessel
37 enforcement fee fund. All moneys credited to the vessel enforcement
38 fee fund shall be used by the department of wildlife and parks only for
39 the purpose of funding the administration and operation, including

1 equipment, associated with the enforcement of the requirement that
2 vessels be titled. All expenditures from the vessel enforcement fee fund
3 shall be made in accordance with appropriation acts, upon warrants of
4 the director of accounts and reports issued pursuant to vouchers
5 approved by the secretary of the department of wildlife and parks.

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

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

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

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

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

- 1 this section shall be verified by the applicant.
- 2 (e) All licenses shall be granted or refused within 30 days after the
3 application is received by the director. All licenses shall expire, unless
4 previously suspended or revoked, on December 31 of the calendar year
5 for which they are granted, except that where a complaint respecting
6 the cancellation, termination or nonrenewal of a sales agreement is in
7 the process of being heard, no replacement application shall be
8 considered until a final order is issued by the director. Applications for
9 renewals, received by the director after February 15 shall be considered
10 as new applications.
- 11 (f) New and used vessel dealers license fees for each calendar year
12 or any part thereof, shall be \$75.
- 13 (g) The license of all persons licensed under the provisions of the
14 Kansas vessel titling act shall state the address of the established place
15 of business, office or branch and must be conspicuously displayed
16 therein. If such address is changed, the director shall endorse the
17 change of address on the license without charge.
- 18 (h) No license shall be issued by the director to any person to act as
19 a new or used dealer, unless the applicant maintains an established
20 place of business which has been inspected and approved by the
21 division.
- 22 (i) Dealers required under the provisions of this act to maintain an
23 established place of business shall own or have leased and use
24 sufficient lot space at the established place of business and any
25 supplemental place of business to display the dealer's inventory of
26 vessels.
- 27 (j) A sign with durable lettering at least 10 inches in height and
28 easily visible from the street identifying the established place of
29 business shall be displayed by every dealer. Notwithstanding the other
30 provisions of this subsection, the height of lettering of the required sign
31 may be less than 10 inches as necessary to comply with local zoning
32 regulations.
- 33 (k) If the established or supplemental place of business or lot is
34 zoned, approval must be secured from the proper zoning authority and
35 proof that the use complies with the applicable zoning law, ordinance
36 or resolution must be furnished to the director by the applicant for
37 licensing.
- 38 (l) An established or supplemental place of business, otherwise
39 meeting the requirements of the Kansas vessel titling act, may be used

1 by a dealer to conduct more than one business as long as suitable space
2 and facilities exist therein to properly conduct the business of a vessel
3 dealer.

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

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

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

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

21 (b) Make available during regular business hours to any employee of
22 the division for the purpose of investigation or inspection, all records
23 concerning vessels purchased, sold or exchanged during the preceding
24 12 months, including certificates of title on all vessels owned by the
25 dealership.

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

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

- 36 (1) Proof of financial unfitness of the applicant;
37 (2) material false statement in an application for a license;
38 (3) filing a materially false or fraudulent tax return as certified by
39 the director of taxation;

- 1 (4) negligently failing to comply with any applicable provision of
- 2 the Kansas vessel titling act or any applicable rule or regulation
- 3 adopted pursuant thereto;
- 4 (5) knowingly defrauding any retail buyer to the buyer's damage;
- 5 (6) negligently failing to perform any written agreement with any
- 6 buyer;
- 7 (7) knowingly making a fraudulent sale or transaction;
- 8 (8) knowingly engaging in false or misleading advertising;
- 9 (9) willful misrepresentation, circumvention or concealment,
- 10 through a subterfuge or device, of any material particulars, or the nature
- 11 thereof, required by law to be stated or furnished to the retail buyer;
- 12 (10) negligent use of fraudulent devices, methods or practices in
- 13 contravention of law with respect to the retaking of goods under retail
- 14 installment contracts and the redemption and resale of such goods;
- 15 (11) knowingly violating any law relating to the sale, distribution or
- 16 financing of vessels;
- 17 (12) has failed or refused to permit an agent of the division, during
- 18 the licensee's regular business hours, to examine or inspect such
- 19 dealer's records pertaining to titles and purchases and sales of vessels;
- 20 (13) has demonstrated that such person is not of good character and
- 21 reputation in the community in which the dealer resides;
- 22 (14) has, within five years immediately preceding the date of
- 23 making application, been convicted of a felony or any crime involving
- 24 moral turpitude, or has been adjudged guilty of the violations of any
- 25 law of any state or the United States in connection with such person's
- 26 operation as a dealer or salesperson; or
- 27 (15) failure to provide adequate proof of ownership for vessels in
- 28 the dealer's possession.
- 29 (b) The director may deny the application for a license within 30
- 30 days after receipt thereof by written notice to the applicant, stating the
- 31 grounds for such denial. Upon request by the applicant whose license
- 32 has been so denied, the applicant shall be granted an opportunity to be
- 33 heard in accordance with the provisions of the Kansas administrative
- 34 procedure act.
- 35 (c) If a licensee is a firm or corporation, it shall be sufficient cause
- 36 for the denial, suspension or revocation of a license that any officer,
- 37 director or trustee of the firm or corporation, or any member in case of
- 38 a partnership, has been guilty of any act or omission which would be
- 39 good cause for refusing, suspending or revoking a license to such party

1 as an individual. Each licensee shall be responsible for the acts of its
2 salespersons or representatives while acting as its agents.

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

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

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

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

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

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

26