

1 AN ACT relating to security interests.

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

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

4 (1) Except as provided in subsection ~~(5)~~~~(4)~~ of this section and in KRS 355.9-311(4),  
5 the perfection and discharge of a security interest in any property for which has been  
6 issued a Kentucky certificate of title shall be by notation on the certificate of title.  
7 Notation shall be made by the entry of information required by subsection ~~(8)~~~~(7)~~  
8 of this section into the Automated Vehicle Information System, and shall be deemed  
9 to have occurred upon the entry. The notation of the security interest on the  
10 certificate of title shall be in accordance with this chapter and shall remain effective  
11 from the date on which the security interest is noted on the certificate of title for a  
12 period of ten (10) years, or, in the case of a manufactured home, for a period of  
13 thirty (30) years, or until discharged under this chapter and KRS Chapter 186. The  
14 filing of a continuation statement within the six (6) months preceding the expiration  
15 of the initial period of a notation's effectiveness extends the expiration date for five  
16 (5) additional years, commencing on the day the notation would have expired in the  
17 absence of the filing. Succeeding continuation statements may be filed in the same  
18 manner to continue the effectiveness of the initial notation.

19 (2) Except as provided in subsection ~~(5)~~~~(4)~~ of this section, the notation of security  
20 interests relating to property required to be titled in Kentucky through the county  
21 clerk shall be done in the office of the county clerk of the county in which the  
22 debtor resides. ***A motor vehicle dealer, an initial secured party, its assignee***  
23 ***lender, and a county clerk shall rely on a county of residence designated by the***  
24 ***debtor on any approved, notarized state form utilized in lien titling or the title***  
25 ***transfer process signed by the debtor. Reliance on the foregoing by the motor***  
26 ***vehicle dealer, secured parties, and county clerk shall relieve those persons from***  
27 ***liability to any third party claiming failure to comply with this section. The***

1 *security interest shall be deemed to be perfected when it:*

2 *(a) Is received by the county clerk;*

3 *(b) Identifies the secured party with reasonable particularity;*

4 *(c) Is evidenced by the date and time-stamped entry in a title processing system*  
5 *maintained by that county clerk; and*

6 *(d) Is recorded in the county of residence of the debtor as designated by the*  
7 *debtor in the sworn statement.*

8 *(3) Except as provided in subsection (5) of this section,* if the debtor is other than a  
9 natural person, the following provisions govern the determination of the county of  
10 the debtor's residence:

11 (a) A partnership shall be deemed a resident of the county in which its principal  
12 place of business in this state is located. If the debtor does not have a place of  
13 business in this state, then the debtor shall be deemed a nonresident for  
14 purposes of filing in this state;

15 (b) A limited partnership organized under KRS Chapter 362 or as defined in KRS  
16 362.2-102(14) shall be deemed a resident of the county in which its principal  
17 place of business is located, as set forth in its certificate of limited partnership  
18 or most recent amendment thereto filed pursuant to KRS Chapter 362 or  
19 362.2-202. If such office is not located in this state, the debtor shall be  
20 deemed a nonresident for purposes of filing in this state;

21 (c) A limited partnership not organized under the laws of this state and authorized  
22 to do business in this state shall be deemed a resident of the county in which  
23 the office of its process agent is located, as set forth in the designation or most  
24 recent amendment thereto filed with the Secretary of State of the  
25 Commonwealth of Kentucky;

26 (d) A corporation organized under KRS Chapter 271B, 273, or 274 or a limited  
27 liability company organized under KRS Chapter 275 shall be deemed a

- 1 resident of the county in which its registered office is located, as set forth in  
2 its most recent corporate filing with the Secretary of State which officially  
3 designates its current registered office;
- 4 (e) A corporation not organized under the laws of this state, but authorized to  
5 transact or do business in this state under KRS Chapter 271B, 273, or 274, or  
6 a limited liability company not organized under the laws of this state, but  
7 authorized to transact business in this state under KRS Chapter 275, shall be  
8 deemed a resident of the county in which its registered office is located, as set  
9 forth in its most recent filing with the Secretary of State which officially  
10 designates its current registered office;
- 11 (f) A cooperative corporation or association organized under KRS Chapter 272  
12 shall be deemed a resident of the county in which its principal business is  
13 transacted, as set forth in its articles of incorporation or most recent  
14 amendment thereto filed with the Secretary of State of the Commonwealth of  
15 Kentucky;
- 16 (g) A cooperative corporation organized under KRS Chapter 279 shall be deemed  
17 a resident of the county in which its principal office is located, as set forth in  
18 its articles of incorporation or most recent amendment thereto filed with the  
19 Secretary of State of the Commonwealth of Kentucky;
- 20 (h) A business trust organized under KRS Chapter 386 shall be deemed a resident  
21 of the county in which its principal place of business is located, as evidenced  
22 by the recordation of its declaration of trust in that county pursuant to KRS  
23 Chapter 386;
- 24 (i) A credit union organized under Subtitle 6 of KRS Chapter 286 shall be  
25 deemed a resident of the county in which its principal place of business is  
26 located, as set forth in its articles of incorporation or most recent amendment  
27 thereto filed with the Secretary of State of the Commonwealth of Kentucky;

1           and

2           (j) Any other organization (defined in KRS 355.1-201) shall be deemed a  
3           resident of the county in which its principal place of business in this state is  
4           located, except that any limited liability company, limited liability partnership,  
5           limited partnership, or corporation not organized under the laws of this state  
6           and not authorized to transact or do business in this state shall be deemed a  
7           nonresident for purposes of filing in this state. If the organization does not  
8           have a place of business in this state, then it shall be deemed a nonresident for  
9           purposes of filing in this state.

10          If the debtor does not reside in the Commonwealth, the notation of the security  
11          interest shall be done in the office of the county clerk in which the property is  
12          principally situated or operated. Notwithstanding the existence of any filed  
13          financing statement under the provisions of KRS Chapter 355 relating to any  
14          property registered or titled in Kentucky, the sole means of perfecting and  
15          discharging a security interest in property for which a certificate of title is required  
16          by this chapter is by notation on the property's certificate of title under the  
17          provisions of this chapter or in accordance with the provisions of KRS 186.045(3).

18          In other respects the security interest is governed by the provisions of KRS Chapter  
19          355.

20          ~~(4)~~~~(3)~~ Except as provided in subsection ~~(5)~~~~(4)~~ of this section, before ownership of  
21          property subject to a lien evidenced by notation on the certificate of title may be  
22          transferred, the transferor shall obtain the release of the prior liens in his name  
23          against the property being transferred. Once a security interest has been noted on the  
24          owner's title, a subsequent title shall not be issued by any county clerk free of the  
25          notation unless the owner's title is presented to the clerk and it has been noted  
26          thereon that the security interest has been discharged. If this requirement is met,  
27          information relating to any security interest shown on the title as having been

1 discharged may be omitted from the title to be issued by the clerk. If information  
 2 relating to the discharge of a security interest is presented to a clerk under the  
 3 provisions of KRS 186.045(3), the clerk shall discharge the security interest and  
 4 remove the lien information from AVIS.

5 ~~(5)~~~~(4)~~ Notwithstanding subsections (1), (2), (3) and ~~(4)~~~~(3)~~ of this section, a county  
 6 clerk shall, following inspection of the vehicle by the sheriff, to determine that the  
 7 vehicle has not been stolen, issue a new ownership document to a vehicle, clear of  
 8 all prior liens, to a person after he or she provides to the county clerk an affidavit  
 9 devised by the Transportation Cabinet and completed by the person. The ownership  
 10 document presented as a result of this affidavit shall be in accordance with  
 11 subsection (6)~~(5)~~ of this section. In the affidavit, the affiant shall attest that:

- 12 (a) The affiant or the agent of the affiant possesses the vehicle;
- 13 (b) Before he or she provided the notices required by paragraphs (c) and (d) of  
 14 this subsection:
  - 15 1. A debt on the vehicle has been owed him or her for more than thirty (30)  
 16 days;
  - 17 2. Within thirty (30) days of payment of damages by an insurance company  
 18 and receipt by the current owner of the motor vehicle or lienholder of  
 19 damages pursuant to a claim settlement which required transfer of the  
 20 vehicle to the insurance company, the insurance company has been  
 21 unable to obtain:
    - 22 a. A properly endorsed certificate of title on the vehicle from the  
 23 current owner; and
    - 24 b. If applicable, any lien satisfactions; or
  - 25 3. a. The vehicle was voluntarily towed or transported pursuant to a  
 26 request of the current owner or an insurance company that a motor  
 27 vehicle dealer, licensed as a used motor vehicle dealer and motor

1                    vehicle auction dealer, take possession of and store the motor  
2                    vehicle in the regular course of business; and

3                    b.    Within forty-five (45) days of taking possession of the motor  
4                    vehicle, the motor vehicle dealer has not been paid storage fees by  
5                    the current owner or lienholder and has not been provided both a  
6                    properly endorsed certificate of title and if applicable, any lien  
7                    satisfactions;

8                    (c)   More than thirty (30) days before presenting the affidavit to the county clerk,  
9                    the affiant attempted to notify the owner of the vehicle and all known  
10                    lienholders, including those noted on the title, by certified mail, return receipt  
11                    requested, or by a nationally recognized courier service, of his or her name,  
12                    address, and telephone number as well as his or her intention to obtain a new  
13                    title or salvage title, as applicable, clear of all prior liens, unless the owner or a  
14                    lienholder objects in writing;

15                    (d)   More than fourteen (14) days before presenting the affidavit to the county  
16                    clerk, the affiant had published a legal notice stating his or her intention to  
17                    obtain title to the vehicle. The legal notice appeared at least twice in a seven  
18                    (7) day period in a newspaper with circulation in the county. The legal notice  
19                    stated:

20                    1.    The affiant's name, address, and telephone number;  
21                    2.    The owner's name;  
22                    3.    The names of all known lienholders, including those noted on the title;  
23                    4.    The vehicle's make, model, and year; and  
24                    5.    The affiant's intention to obtain title to the vehicle unless the owner or a  
25                    lienholder objects in writing within fourteen (14) days after the last  
26                    publication of the legal notice; and

27                    (e)   Neither the owner nor a lienholder has objected in writing to the affiant's right

1 to obtain title to the vehicle.

2 ~~(6)~~~~(5)~~ (a) If subsection ~~(5)~~~~(4)~~(b)1. of this section applies, the new ownership  
3 document shall be a title.

4 (b) If subsection ~~(5)~~~~(4)~~(b)2. or 3. of this section applies, the new ownership  
5 document shall be a salvage title if the vehicle meets the requirements for a  
6 salvage title as stated in KRS 186A.520(1)(a).

7 (c) If subsection ~~(5)~~~~(4)~~(b)2. or 3. of this section applies and the vehicle does not  
8 meet the requirements for a salvage title as stated in KRS 186A.520(1)(a), the  
9 new ownership document shall be a title.

10 ~~(7)~~~~(6)~~ No more than two (2) active security interests may be noted upon a certificate  
11 of title.

12 ~~(8)~~~~(7)~~ In noting a security interest upon a certificate of title, the county clerk shall  
13 ensure that the certificate of title bears the lienholder's name, mailing address and  
14 zip code, the date the lien was noted, the notation number, and the county in which  
15 the security interest was noted. The clerk shall obtain the information required by  
16 this subsection for notation upon the certificate of title from the title lien statement  
17 described in KRS 186A.195 to be provided to the county clerk by the secured party.

18 ~~(9)~~~~(8)~~ For all the costs incurred in the notation and discharge of a security interest on  
19 the certificate of title, the county clerk shall receive the fee prescribed by KRS  
20 64.012. The fee prescribed by this subsection shall be paid at the time of submittal  
21 of the title lien statement described in KRS 186A.195.

22 ~~(10)~~~~(9)~~ A copy of the application, certified by the county clerk, indicating the lien will  
23 be noted on the certificate of title shall be forwarded to the lienholder.

24 ➔Section 2. KRS 186A.195 is amended to read as follows:

25 (1) As used in this chapter, a title lien statement is a document to be submitted by the  
26 secured party to the county clerk. Upon submission of the title lien statement, the  
27 county clerk shall use the information contained therein to note the security interest

1 on the certificate of title, in accordance with KRS 186A.190~~(8)~~~~(7)~~. The county  
2 clerk may make title lien statements available to the general public. However,  
3 public availability of such statements is not necessary or effective to perfect a  
4 security interest in property required to be registered or titled in accordance with  
5 this chapter.

6 (2) If a title lien statement and the required fees accompany the application for first title  
7 of any property in the name of an owner, the county clerk shall enter the  
8 information required by KRS 186A.190~~(8)~~~~(7)~~ into the automated system so as to  
9 produce a certificate of title in Frankfort bearing in addition to any other required  
10 information, the information designated by KRS 186A.190~~(8)~~~~(7)~~. The clerk shall  
11 thereby produce, in accordance with design of the automated system, a certificate of  
12 registration, if required.

13 (3) If a title lien statement and the required fees are not received at the time of  
14 application for first title of any property in the name of the owner due to owner's  
15 residency in another county, or if the form prescribed by KRS 186A.060 indicates a  
16 pending lien but the title lien statement does not accompany the application for title,  
17 the county clerk shall enter into the Automated Vehicle Information System (AVIS)  
18 the name and address of the lienholder and the county where the lien is to be noted  
19 or that a lien is pending. The clerk shall indicate a title is not to be issued until the  
20 lien has been noted and fees, according to KRS 186A.190, paid in the county of the  
21 owner's residence or in thirty (30) days. The county clerk shall then issue the  
22 registration. The county clerk in the county of the owner's residence shall, after  
23 receiving the title lien statement and fees contained in KRS 186A.190, enter into the  
24 Automated Vehicle Information System (AVIS) the date of lien notation and the  
25 notation number, thus enabling the system to produce the title in Frankfort.

26 (4) Should a certificate of title be issued after the thirty (30) day period has expired  
27 without the notation of a security interest thereon, or should there be no provision

1 made for a lien to be noted in the county of residence of the debtor within thirty (30)  
2 days and the title issued within that time, the secured party shall request from the  
3 debtor, and the debtor shall submit to the secured party, the certificate of title. The  
4 secured party shall submit the certificate of title along with the title lien statement to  
5 the county clerk of the county of the debtor's residence. The county clerk shall then  
6 enter the information required by KRS 186A.190(8)~~[(7)]~~ into the Automated  
7 Vehicle Information System (AVIS) and note on the certificate of title in the  
8 appropriate section the information described in that section. Following the notation  
9 of the appropriate information on the certificate of title, the county clerk shall return  
10 the title to the debtor.

11 (5) The security interest noted on the certificate of title shall be deemed perfected at the  
12 time the security interest attaches (KRS 355.9-203) if the secured party tenders the  
13 required fees and submits a properly completed title lien statement and application  
14 for first title or, in the case of property previously titled in the name of its debtor,  
15 the certificate of title to the appropriate county clerk within thirty (30) days of  
16 attachment. Otherwise, the security interest shall be deemed perfected at the time  
17 that such fees are tendered and such documents are submitted to the appropriate  
18 county clerk.

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

20 (1) With respect to a vehicle previously titled in the name of its debtor, the secured  
21 party shall, within thirty (30) days after execution of the security agreement, obtain  
22 the current certificate of title in the name of the debtor, with no more than one (1)  
23 prior lien indicated thereon, and present to the county clerk the certificate of title,  
24 which the secured party shall have the right to obtain from the debtor, together with  
25 the title lien statement and the required fees in KRS 186A.190 to the county clerk.

26 (2) For failure to present both the title and title lien statement within the time  
27 prescribed by subsection (1) of this section, the secured party shall pay a penalty of

1 two dollars (\$2) to the county clerk as a prerequisite for noting the security interest  
2 on the title.

3 (3) The county clerk shall enter the information required by KRS 186A.190(~~8~~)(~~7~~) into  
4 the automated system.

5 (4) The county clerk shall record upon the title in the appropriate section the  
6 information designated by KRS 186A.190(~~8~~)(~~7~~).