

Act No. 678
Public Acts of 2018
Approved by the Governor
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Rep. VanderWall

ENROLLED HOUSE BILL No. 6486

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 80304, 80305, 80307, 80309, 80314, 80319, 80320, and 80321 (MCL 324.80304, 324.80305, 324.80307, 324.80309, 324.80314, 324.80319, 324.80320, and 324.80321), sections 80304, 80305, 80314, 80319, and 80321 as added by 1995 PA 58, sections 80307 and 80309 as amended by 2005 PA 271, and section 80320 as amended by 2005 PA 37, and by adding section 80315f.

The People of the State of Michigan enact:

Sec. 80304. (1) Subject to section 80320(4), and except as provided in section 80306, a person shall not sell or otherwise dispose of a watercraft without delivering to the purchaser or transferee of the watercraft a certificate of title with such assignment on the certificate of title as is necessary to show title in the purchaser.

(2) Subject to 80320(4), a person shall not purchase or otherwise acquire a watercraft without obtaining a certificate of title for it in the person's name pursuant to this part.

Sec. 80305. (1) Subject to section 80320(4), a person acquiring a watercraft from the owner of the watercraft, whether the owner is a manufacturer, importer, dealer, or otherwise, shall not acquire any right, title, claim, or interest in or to the watercraft until that person has issued to him or her a certificate of title to the watercraft, or delivered a manufacturer's or importer's certificate for the watercraft. A waiver or estoppel shall not operate in favor of that person against a person having possession of the certificate of title, or manufacturer's or importer's certificate for the watercraft, for a valuable consideration.

(2) A court shall not recognize the right, title, claim, or interest of a person in or to a watercraft sold or disposed of, or mortgaged or encumbered, unless the right, title, claim, or interest is 1 of the following:

(a) Subject to section 80320(4), evidenced by a certificate of title or a manufacturer's or importer's certificate issued pursuant to this part.

(b) Evidenced by admission in the pleadings or stipulation of the parties.

Sec. 80307. (1) An application for a certificate of title for a watercraft shall be on a form prescribed by the secretary of state. The application shall be filed with the secretary of state within 15 days after the date of purchase or transfer. At the request of the applicant, an application shall be processed on an expedited basis. The application shall be accompanied by the fee or fees prescribed in section 80311, and if a certificate of title was previously issued for the watercraft, it shall be accompanied by the certificate of title duly assigned, unless otherwise provided in this part. Unless otherwise provided in this part, if a certificate of title was not previously issued for the watercraft in this state, the application shall be accompanied by a manufacturer's or importer's certificate, by a certificate of ownership, or a certificate of number issued under part 801 or former 1967 PA 303, if purchased by the applicant on or before July 1, 1976, or by a certificate of title, bill of sale, or other evidence of ownership required by the law of another state from which the watercraft is brought into this state. Evidence of ownership of a watercraft for which a Michigan certificate of title was not previously issued, and that does not have permanently affixed to it a hull identification number, shall be accompanied by the certificate of hull identification number assigned by the secretary of state as provided in section 80308. The secretary of state shall retain the evidence of title presented by the applicant and upon which the certificate of title is issued, and shall use reasonable diligence in ascertaining whether the facts in the application are true by checking the application and documents accompanying the application with the secretary of state's records of watercraft. Subject to section 80320(4), if satisfied that the applicant is the owner of the watercraft and that the application is in the proper form, the secretary of state shall issue a certificate of title.

(2) If the secretary of state is not satisfied as to the ownership of a watercraft having a value of more than \$2,500.00, before registering the watercraft and issuing a certificate of title, the secretary of state may require the applicant to file a properly executed surety bond in a form prescribed by the secretary of state and executed by the applicant and a company authorized to conduct a surety business in this state. The bond shall be in an amount equal to twice the value of the watercraft as determined by the secretary of state and shall be conditioned to indemnify or reimburse the secretary of state, any prior owner, and any subsequent purchaser and their successors in interest against any expense, loss, or damage, including reasonable attorney fees, incurred as a result of the issuance of a certificate of title for the watercraft or any defect in the right, title, or interest of the applicant in the watercraft. An interested person has a right of action to recover on the bond for a breach of the conditions of the bond, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of 3 years, or before 3 years if the watercraft is no longer registered in this state and the currently valid certificate of title is surrendered to the secretary of state, unless the secretary of state has received notification of the pendency of an action to recover on the bond. If the secretary of state is not satisfied as to the ownership of a watercraft that is worth \$2,500.00 or less, the secretary of state shall require the applicant to certify that the applicant is the owner of the watercraft and entitled to register and title the watercraft.

(3) Subject to section 80320(4), when a watercraft is sold by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. In other cases, the certificate shall be obtained by the purchaser.

Sec. 80309. (1) The secretary of state may refuse to issue a watercraft certificate of title under the circumstances provided in section 80320(4).

(2) Subject to subsection (1), the secretary of state shall issue a certificate of title containing the information required in the application for a certificate of title, as prescribed by section 80308, except for the name and address of the previous owner. The certificate of title shall also contain space for the notation and cancellation of a lien, mortgage, or encumbrance. An assignment of certificate of title shall appear on the certificate of title in the form to be prescribed by the secretary of state. The assignment form shall include a warranty that the signer is the owner of the watercraft and that a mortgage, lien, or encumbrance is not on the watercraft, except as noted on the face of the certificate of title.

Sec. 80314. (1) If a certificate of title is lost, mutilated, or becomes illegible, the person to whom that certificate of title was issued may apply to the secretary of state for a duplicate copy of the certificate of title upon a form prescribed by the secretary of state and accompanied by the fee prescribed by section 80311. The applicant shall certify the application. Upon an applicant's compliance with this section, the secretary of state shall issue to that applicant a duplicate copy of the certificate of title that contains the legend, "This is a duplicate certificate and may be subject to the rights of a person under the original certificate." As provided under section 80320(4), the department of state is not required to issue a duplicate certificate of title to the owner of a watercraft if the title is subject to a security interest. A purchaser of watercraft who obtains title to the watercraft through a duplicate copy of the watercraft's certificate of title acquires only those rights in the watercraft that the holder of the duplicate certificate of title had. At the time of

purchase, a watercraft purchaser may require the seller to indemnify the purchaser and subsequent purchasers of the watercraft against a loss that the purchaser or subsequent purchasers may suffer by reason of a claim presented upon the original certificate of title. If the original certificate of title is recovered by the owner, the owner shall immediately surrender it to the secretary of state for cancellation.

(2) The secretary of state is not required to issue a duplicate of a lost watercraft certificate of title when ownership of the watercraft is being transferred if all of the following conditions are met:

(a) The transferor personally appears before an authorized representative of the secretary of state and does all of the following:

(i) Provides evidence of the transferor's identity and ownership interest in the watercraft that is satisfactory to the authorized representative of the secretary of state.

(ii) Pays the fee required under section 80311.

(b) The transferee or the transferee's representative accompanies the transferor in appearing before the authorized agent of the secretary of state and does all of the following:

(i) Applies for an original certificate of title for the watercraft.

(ii) Provides evidence of the transferee's identity that is satisfactory to the authorized representative of the secretary of state.

(iii) Pays the fee required under section 80311.

(3) If a duplicate certificate of title is not required for the transfer of a watercraft under subsection (2), the secretary of state shall maintain a record specifying that ownership of the watercraft was transferred without a surrender of the watercraft's certificate of title.

(4) As used in this section, "transfer" or "transferred" includes a conveyance, assignment, and gift.

Sec. 80315f. (1) The secretary of state may enter into 1 or more contracts under this section to establish, implement, and operate an electronic lien title system to process the notification and release of security interests in watercraft through electronic file transfers, or as otherwise determined by the secretary of state, in lieu of the issuance and maintenance of paper documents otherwise required by law. Any such contract shall require the protection of proprietary information in the electronic lien title system and provide for the protection of a competitive free market.

(2) Except for persons who are not normally engaged in the business or practice of financing watercraft, all secured parties are required to participate in the electronic lien title system.

(3) For the purposes of this part, any requirement that a security interest or other information appear on a certificate of title is satisfied by the inclusion of that information in an electronic file maintained in an electronic lien title system. The satisfaction of a security interest may be electronically transmitted to the secretary of state. A secured party shall execute a release of its security interest in a watercraft in a manner prescribed by the department not more than 14 days after the secured party receives the payment in satisfaction of the security interest. If the certificate of title is in the possession of the watercraft owner, the secured party shall deliver the release to the watercraft owner or as otherwise directed by the owner. However, if the certificate of title is held electronically as provided under section 80320(4), the secured party shall deliver the release of security interest to the department of state, and the department of state shall cancel the security interest. If the secured party fails to comply with these requirements for the release of a secured interest, the secured party is liable to the watercraft owner for all damages sustained by the owner because of the failure to comply. The electronic lien title system shall provide a mechanism by which a watercraft dealer may assign ownership of a watercraft without proof that the prior security interest was satisfied existing on the electronic lien title system. However, in the event of such an assignment, the dealer warrants that the title is free and clear of all liens and assumes responsibility for the satisfaction of the security interest.

(4) A certified copy of the secretary of state's electronic record of a security interest is admissible in any civil, criminal, or administrative proceeding in this state as evidence of the existence of the security interest. If a certificate of title is maintained in the electronic lien title system, a certified copy of the secretary of state's electronic record of the certificate of title is admissible in any civil, criminal, or administrative proceeding in this state as evidence of the existence and contents of the certificate of title.

(5) The secretary of state may determine any requirements necessary to carry out this section, including, but not limited to, 1 or more of the following:

(a) Monitoring the reasonable fees charged by service providers or a contractor for the establishment and maintenance of the electronic lien title system.

(b) The qualifications of service providers for participation in the electronic lien title system.

(c) The qualifications for a contractor to enter into a contract with the secretary of state to establish, implement, and operate the electronic lien title system.

(d) Program specifications that a contractor must adhere to in establishing, implementing, and operating the electronic lien title system.

(6) The electronic lien title system under this section shall be established, implemented, and operational by February 16, 2021.

(7) By February 16, 2021, the department shall require a person to enter evidence of security interests and any related information into the electronic lien title system in lieu of paper documents.

(8) As used in this section:

(a) "Contractor" means a person who enters into a contract with the secretary of state to establish, implement, and operate the electronic lien title system described in this section.

(b) "Electronic lien title system" means a system to process the notification and release of security interests through electronic file transfers that is established and implemented under this section.

(c) "Service provider" means a person who provides secured parties with software to manage electronic lien and title data as provided under this section.

Sec. 80319. (1) A person shall not do any of the following:

(a) Reproduce, alter, counterfeit, forge, or duplicate a certificate of title, or a manufacturer's or importer's certificate, to a watercraft, an assignment of either, or a cancellation of a lien on a watercraft.

(b) Hold or use a certificate, assignment, or cancellation knowing it is reproduced, altered, counterfeited, forged, or duplicated.

(c) Procure or attempt to procure a certificate of title to a watercraft, or pass or attempt to pass a certificate of title or an assignment of title to a watercraft, knowing or having reason to believe that the watercraft is stolen.

(d) Sell or offer for sale in this state a watercraft on which the manufacturer's or assigned hull identification number is destroyed, removed, covered, altered, or defaced, with knowledge of the destruction, removal, covering, alteration, or defacement of the manufacturer's or assigned hull identification number.

(e) Use a false or fictitious name, give a false or fictitious address, or make a false statement in an application or certificate required under this part, or in a bill of sale or sworn statement of ownership, or otherwise commit a fraud in an application.

(f) Fraudulently indicate on a certificate of title that there is no security interest on record for a watercraft.

(g) Forge or counterfeit a letter, receipt, or other document from the holder of a security interest in a watercraft indicating that the security interest has been released.

(h) Sell or transfer a watercraft without delivering to the purchaser or transferee of the watercraft a certificate of title, or a manufacturer's or importer's certificate to the watercraft, assigned to the purchaser as provided for in this part.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$5,000.00, or both.

(3) A person who is convicted of a violation of subsection (1)(f) or (g), in addition to any other penalty, shall pay restitution to the holder of a security interest in the watercraft in the amount of the outstanding lien on the watercraft.

Sec. 80320. (1) A party with a secured interest in a watercraft, upon presentation of a properly completed application for certificate of title to the secretary of state, together with the fee prescribed by section 80311, may have a notation of the security interest made on the face of the certificate of title to be issued by the secretary of state. The secretary of state shall enter the notation and the date and shall note the security interest and the date in his or her files. However, as provided in subsection (5), the secretary of state is not required to issue a certificate of title to the owner of a vehicle if the title is subject to a security interest.

(2) When the security interest is discharged, the holder shall note the discharge on the certificate of title over his or her signature.

(3) Receipt by the secretary of state of a properly tendered application for a certificate of title on which a security interest in a watercraft is to be indicated is a condition of perfection of a security interest in the watercraft, unless, under subsection (4), the department of state does not issue certificates of title for watercraft subject to a security interest, and is equivalent to filing a financing statement under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.9994, with respect to the watercraft. When a security interest in a watercraft is perfected, it has priority over the rights of a lien creditor as lien creditor is defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

(4) The department of state may require that all transactions concerning watercraft title liens and security interests be conducted by electronic means, as determined by the department of state. In that case, if a watercraft is subject to a security interest, the department of state is not required to issue a certificate of title to the owner of the watercraft

or a lienholder if it maintains a record of title electronically. After all liens have been terminated, or for purposes of retitling the watercraft in another state or any other purpose considered appropriate by the department of state, the department of state may issue a paper copy of the watercraft title to the watercraft owner.

(5) A watercraft sale transaction in which a security interest is entered by electronic means shall include a document recording entry of the electronic security interest and information regarding the financial institution that holds the security interest. When a secured party is presented with payment in satisfaction of the security interest, a secured receipt in a form approved by the department of state may be produced and submitted to the department of state in lieu of the certificate of title for purposes of transferring ownership in the watercraft.

Sec. 80321. A watercraft acquired by the owner prior to January 1, 1977, is not the subject of a certificate of title until it is mortgaged, sold, or transferred, or, subject to section 80320(4), a lien is placed on the watercraft.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor