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A Bill

SENATE BILL 479

By: Senator B. Sample

For An Act To Be Entitled

AN ACT TO AUTHORIZE AND REQUIRE THE ISSUANCE OF A
TITLE FOR A WATERCRAFT; TO CREATE THE ARKANSAS
MOTORBOAT REGISTRATION AND TITLING ACT; AND FOR OTHER
PURPOSES.

Subtitle

TO AUTHORIZE AND REQUIRE THE ISSUANCE OF
A TITLE FOR A WATERCRAFT; AND TO CREATE
THE ARKANSAS MOTORBOAT REGISTRATION AND
TITLING ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-2A-104(1)(a), concerning leases subject to other laws, is amended to read as follows:

(a) certificate of title statute of this state, including, but not limited to §§ 27-14-801 – 27-14-804 and §§ 27-101-1014 – 27-101-1019, concerning the filing of liens and encumbrances on motor vehicles and motorboats;

SECTION 2. Arkansas Code § 4-9-311(a), concerning perfection of security interests in property, is amended to read as follows:

(a) Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of



a lien creditor with respect to the property preempt § 4-9-310(a);

(2) any other laws of this State which provide for central filing of security interests or which require indication on a certificate of title to property of such interest, including but not limited to §§ 27-14-801 – 27-14-807 and §§ 27-101-1014 – 27-101-1019; or

(3) a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

SECTION 3. Arkansas Code § 19-5-205(e)(1)(B)(i), concerning the State Central Services Fund, is amended to read as follows:

(i) Those special revenues as specified in § 19-6-301(9), (11), (19), (21), (37), (75), (76), (77), (78), (79), (82), (83), (84), (85), (86), (87), (88), (89), (91), (96), (116), (118), (120), (124), (149), (188), (231), (244), (246), ~~and (247)~~, (263), and (264) and eight percent (8%) of those special revenues as set out in § 19-6-301(20) of the Revenue Classification Law, § 19-6-101 et seq.;

SECTION 4. Arkansas Code § 19-6-301, concerning special revenues enumerated, is amended to add additional subdivisions to read as follows:

(263) Motorboat duplicate title, lien filing, lien notation, and certificate of title fees set forth in the Arkansas Motorboat Registration and Titling Act, § 27-101-1001 et seq.; and

(264) Motorboat certificate of title with beneficiary processing fees and certificate of title application fees set forth in the Arkansas Motorboat Registration and Titling Act, § 27-101-1001 et seq.;

SECTION 5. Arkansas Code § 19-6-459 is amended to read as follows:

19-6-459. Commercial Driver License Fund.

The Commercial Driver License Fund shall consist of those special revenues as specified in:

(1) Section 19-6-301(148), to be used to establish and maintain the Arkansas Commercial Driver License Program and for other related purposes as required by the Director of the Department of Finance and Administration in carrying out the functions, powers, and duties of the Revenue Division of

the Department of Finance and Administration, as set out in the Arkansas Uniform Commercial Driver License Act, § 27-23-101 et seq.; and

(2) Section 19-6-301(255), to be used for enhancements to the Arkansas Motor Carrier System under § 27-14-613; and

(3) Section 19-6-301(263) and (264).

SECTION 6. Arkansas Code § 27-101-103(1), concerning the definition of "commission", is repealed.

~~(1) "Commission" means the Arkansas State Game and Fish Commission;~~

SECTION 7. Arkansas Code § 27-101-103, concerning definitions related to watercrafts, is amended to add an additional subdivision to read as follows:

(14) "Certificate of number" means a motorboat registration or motorboat registration certificate.

SECTION 8. Arkansas Code § 27-101-108(a), concerning the filing and publication of rules and regulations, is amended to read as follows:

(a) A copy of the regulations adopted pursuant to §§ 27-101-101 et seq., 27-101-201 et seq., 27-101-301 et seq., 27-101-501 et seq., ~~and 27-101-601 et seq.,~~ and the Arkansas Motorboat Registration and Titling Act, § 27-101-1001 et seq., and of any amendments of those regulations shall be filed in the offices of the Arkansas State Game and Fish Commission, the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research where each copy shall be preserved as a public record.

SECTION 9. Arkansas Code § 27-101-110, is amended to read as follows:
27-101-110. Deposit of funds in State Treasury.

(a) Except as otherwise provided in this chapter, All all fees collected by the Director of the Department of Finance and Administration under ~~the provisions of~~ this chapter shall be deposited as special revenues ~~in~~ into the State Treasury to the credit of the Special Revenue Fund Account of the State Apportionment Fund.

(b) All these funds The fees collected under subsection (a) of this section shall be credited to the Boating Safety Account Fund, which is

established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

SECTION 10. Arkansas Code Title 27, Chapter 101, Subchapter 1, is amended to add additional sections to read as follows:

27-101-112. Refund of application fees.

An application fee collected by the Office of Motor Vehicle under this chapter shall be:

(1) Refunded to the applicant if the application is refused or rejected; or

(2)(A) Refunded to the applicant if the fee was not required to be paid under this chapter.

(B) A refund shall not be issued under subdivision (2)(A) of this section if the applicant fails to submit an application for refund within six (6) months from the date the applicant paid the application fee.

27-101-113. Payment by credit card.

(a) The Director of the Department of Finance and Administration may:

(1) Allow payment by credit card of any fees due under this chapter;

(2) Promulgate rules and regulations providing for payment by credit card of any fees authorized under this chapter; and

(3) Contract with credit card companies to pay fees normally charged by those companies for allowing the use of their credit cards as authorized by this section.

(b)(1) The net proceeds received, or receivable, from credit card companies shall be prorated to the various funds for which they were collected and deposited into the State Treasury for transfer on the last business day of each month, in the same manner and to be used for the same purposes as all other fees collected upon the issuance or renewal of a motorboat registration with certificate of number and the issuance of a motorboat certificate of title.

(2) Any amounts deducted from the gross proceeds of motorboat registration with a certificate of number or titling fees paid by credit card, which are deducted for the purpose of paying credit card company fees, shall be cash funds not subject to appropriation and, if withheld by the

director, shall be remitted by the director to credit card companies as required under contracts authorized by this section.

SECTION 11. Arkansas Code § 27-101-304(b), concerning the issuance of a certificate of number, is amended to read as follows:

(b) The application shall be signed by the owner of the motorboat and ~~shall be~~ accompanied by a fee as provided in § 27-101-306, verification of the hull identification number, proof the motorboat is listed for assessment, proof of payment of required personal property taxes, and ~~by~~ proof of insurance establishing that the motorboat, if it is equipped with more than fifty horsepower (50 hp), or a personal watercraft, is covered by a liability insurance policy issued by an insurance company authorized to do business in this state.

SECTION 12. Arkansas Code § 27-101-304(e) and (f), concerning issuance of a certificate of number, are amended to read as follows:

~~(e)(1) Upon receipt of the application in approved form, accompanied by proof that the motorboat has been assessed or listed for assessment and, if it is equipped with more than fifty horsepower (50 hp), or is personal watercraft, is covered by a liability insurance policy issued by an insurance company authorized to do business in this state, the director shall enter the application upon the records of his or her office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner~~

The director shall enter upon the records of his or her office an application for issuance of a certificate of number upon receipt of:

- (A) An application submitted in approved form;
- (B) Proof that the motorboat has been assessed or listed for assessment;
- (C) Proof that personal property taxes have been paid; and
- (D) Proof of coverage by a liability insurance policy issued by an insurance company authorized to do business in this state if the motorboat is equipped with more than fifty horsepower (50 hp) or is a personal watercraft.

(2)(A) Upon approval by the director of the application and supporting documents required under subdivision (e)(1) of this section, the

director shall issue to the applicant a certificate of number stating:

- (i) The identifying number assigned to the motorboat;
- (ii) The name and address of the owner; and
- (iii) A description of the motorboat, including when available the make, model, year, and hull identification number of the motorboat.

(B) The certificate of number shall be of a type that prevents as nearly as possible alteration, counterfeiting, duplication, or simulation without ready detection.

~~(2)(A)~~ (3)(A) For the purposes of this section, “proof of insurance” shall consist of a policy declaration page or other documentation, or a copy of a policy declaration page or other documentation in an acceptable electronic format, that reflects the motorboat or personal watercraft coverage furnished to the insured by the insurance company which can be conveniently carried in the motorboat or personal watercraft.

(B) Insurance companies shall not be required to provide proof of insurance that may be conveniently carried as required in subdivision ~~(e)(2)(A)~~ (e)(3)(A) of this section if the insurance coverage is provided as part of a homeowner’s insurance policy.

(C) As used in this section, “acceptable electronic format” means an electronic image produced on the person’s own cellular phone or other type of portable electronic device that displays all of the information in the policy declaration or other documentation as clearly as the paper policy declaration or other documentation.

(D) The presentment of proof of insurance in an acceptable electronic format does not:

- (i) Authorize a search of any other content of an electronic device without a search warrant or probable cause; or
- (ii) Expand or restrict the authority of a law enforcement officer to conduct a search or investigation.

(f)(1) The certificate of number shall be issued ~~in triplicate with the original copy to be~~ and furnished to the owner of the motorboat and upon receipt the owner shall sign in the signature space provided on the certificate of number.

(2) ~~The duplicate~~ A copy shall be retained as a record by the

director.

(3) ~~The triplicate~~ A copy shall be furnished to the commission to be retained for a period of five (5) years.

SECTION 13. Arkansas Code § 27-101-306(g), concerning the renewal of certificates of number, is amended to read as follows:

(g) Certificates of number may be renewed by the owner in the same manner as is provided in this section for initially securing the certificate and upon: ~~payment of the fee as set forth in this section except that the certificate of a motorboat shall not be renewed if it is equipped with more than fifty horsepower (50 HP) or is personal watercraft unless proof is presented that it is covered by a liability insurance policy issued by an insurance company authorized to do business in this state.~~

(1) Payment of all fees required in this chapter;

(2) If applicable, proof the motorboat or personal watercraft is covered by a liability insurance policy issued by an insurance company authorized to do business in this state;

(3) Proof the motorboat is listed for assessment; and

(4) Proof of payment of required personal property taxes.

SECTION 14. Arkansas Code § 27-101-309(c), concerning the application for new a certificate of number after change in ownership, is amended to read as follows:

(c) ~~The application for transfer of the certificate of number shall be shall be accompanied by a fee of two dollars (\$2.00)~~ procedure and fees under § 27-101-304 shall apply.

SECTION 15. Arkansas Code Title 27, Chapter 101, Subchapter 3, concerning motorboat registration and numbering is amended to add an additional section to read as follows:

27-101-314. Obligations of certificate of number holders.

(a)(1) Upon receipt of a certificate of number issued under § 27-101-304, the owner of the motorboat shall write his or her signature on the certificate of number in the space provided.

(2)(A) A certificate of number shall be carried:

(i) In the motorboat to which it refers; or

(ii) On the person of the driver or the person in control of the motorboat.

(B) The certificate of number shall be displayed upon request of a law enforcement officer, any officer of the Arkansas State Game and Fish Commission, or any officer or employee of the Office of Motor Vehicle.

(3) A person charged with violating this section shall not be convicted if he or she produces in court a certificate of number for the motorboat that was issued prior to, and in effect at, the time of the arrest.

(b) For purposes of this section, the original or duplicate certificate of number is required and a photocopy of the certificate of number shall not be sufficient.

(c) This section does not apply when a certificate of number is used to apply for renewal of a certificate of number.

SECTION 16. Arkansas Code Title 27, Chapter 101, is amended to add a new subchapter to read as follows:

Subchapter 10 – Arkansas Motorboat Registration and Titling Act

27-101-1001. Title and purpose.

(a) This subchapter shall be known and may be cited as the “Arkansas Motorboat Registration and Titling Act”.

(b) The purpose of this subchapter is to establish the requirements and procedures for registering with a certificate of number and titling motorboats manufactured on and after January 1, 2020.

27-101-1002. Application, exclusions, and limitations.

(a) Chapters 1-99 of Title 27 do not apply to motorboats registered with a certificate of number and titled under this Subtitle 7.

(b) This subchapter shall apply only to motorboats manufactured on and after January 1, 2020.

(c) Title 27, Chapter 101, Subchapters 1-7, apply to all motorboats regardless of the date the motorboat was manufactured.

(d)(1) All motorboats, regardless of when the motorboat was manufactured, are subject to the requirements of § 27-101-301 et seq.

(2) However, a motorboat manufactured prior to January 1, 2020, is not eligible for issuance of a certificate of title under this subchapter.

(e) This subchapter shall not apply to:

(1) A motorboat issued a certificate of number under federal law or a federally approved numbering system of another state, provided that the motorboat has not been within this state for more than sixty (60) days;

(2) Motorboats from a country other than the United States temporarily using the waters of this state;

(3) Motorboats whose owner is the United States Government, a state, or a subdivision of a state;

(4) Ship lifeboats; or

(5) Homemade motorboats.

27-101-1003. Registration and titling requirements generally.

It is a Class A misdemeanor for a person to operate upon the waters of this state a motorboat of a type required to be titled under this subchapter that is not registered with a certificate of number under § 27-101-301 et seq., or for which a certificate of title, if applicable, has not been issued or applied for, or for which all required fees have not been paid when and as required under this chapter.

27-101-1004. Application for certificate of title.

(a) The owner of a motorboat manufactured on and after January 1, 2020, shall apply to the Office of Motor Vehicle for the issuance of a certificate of title or a certificate of title with beneficiary under § 27-101-1013, for the motorboat upon the appropriate forms furnished by the office.

(b) The application shall contain:

(1) The name, bona fide residence, and mailing address of the owner or business address if the owner is a firm, association, or corporation;

(2)(A) A description of the motorboat, including, when available, the make, model, year, hull identification number, motor or engine serial number or model number, and a manufacturer's certificate of origin.

(B) The manufacturer's certificate of origin shall be furnished to the dealer by the manufacturer and shall accompany the application for certificate of title.

(C) The manufacturer's certificate of origin shall be on a form prescribed by the Director of the Department of Finance and Administration;

(3) A statement concerning all liens or encumbrances upon the motorboat and the names and addresses of all persons having any interest in the motorboat and the nature of the interest; and

(4)(A) Further information as may reasonably be required by the office to determine whether the owner is entitled to a certificate of title.

(B) When the application refers to a motorboat purchased from a dealer, the application shall, if applicable, be accompanied by:

(i) A statement by the dealer or a bill of sale showing any lien retained by the dealer; and

(ii) Payment of applicable lien notation and lien filing fees set forth in § 27-101-1029.

(c) The application shall be accompanied by:

(1) A certificate of title application fee in the amount of eight dollars (\$8.00) per motorboat; and

(2) A certificate of title fee in the amount of two dollars (\$2.00) per motorboat.

(d)(1) The certificate of title application fee collected under subdivision (c)(1) of this section shall be remitted to the Treasurer of State separate and apart from other taxes and fees.

(2)(A) The Treasurer of State shall deduct a percentage of the gross amount of the certificate of title application fee collected under subdivision (c)(1) of this section for the benefit of the Constitutional Officers Fund and the State Central Services Fund as required in §§ 19-5-202 and 19-5-203.

(B) The net amount remaining after the deduction under subdivision (d)(2)(A) of this section shall be distributed as follows:

(i) Fifty percent (50%) of the net amount shall be deposited as special revenue into the State Treasury and credited to the Commercial Driver License Fund for use by the Revenue Division of the Department of Finance and Administration; and

(ii) Fifty percent (50%) of the net amount shall be deposited into the State Treasury as trust funds and credited to the State Police Retirement Fund to be used for the State Police Retirement System.

(e) A certificate of title shall not be issued under this subchapter absent receipt of the following:

- (1) Payment of all applicable fees;
- (2) Proof of payment of personal property taxes;
- (3) Proof of assessment;
- (4) Proof of liability insurance to the extent required in § 27-101-301 et seq.; and
- (5) Any other documentation that may be requested by the office.

27-101-1005. Lost or damaged certificates.

(a) In the event any certificate of title is lost, mutilated, or becomes illegible, the owner or legal representative or successor in interest of the owner of the motorboat for which it was issued, as shown by the records of the Office of Motor Vehicle, shall immediately make application to the office for and may obtain a duplicate certificate of title if the conditions of this section are satisfied.

(b) The following information shall be included in the application:

- (1) The year, make, model, hull identification number, and motor or engine serial number if applicable;
- (2) The name of a lienholder;
- (3) A release if the applicant claims that the lien has been released; and
- (4) Other information required by the office.

(c) In addition to the application referred to in subsection (a) of this section, the following fees are imposed and shall be paid to the office at the time that application for issuance of a duplicate certificate of title is made:

- (1) A certificate of title application fee in the amount of eight dollars (\$8.00) per motorboat; and
- (2) A certificate of title fee of two dollars (\$2.00) per motorboat.

(d)(1) The certificate of title application fee collected under subsection (c)(1) of this section shall be remitted to the Treasurer of State separate and apart from other taxes and fees.

(2)(A) A percentage of the gross amount thereof shall be deducted by the Treasurer of State for the benefit of the Constitutional Officers Fund

and the State Central Services Fund as required in §§ 19-5-202 and 19-5-203.

(B) The net amount remaining after the deduction under subsection (d)(2)(A) of this section shall be distributed as follows:

(i) Fifty percent (50%) of the net amount shall be deposited as special revenues into the State Treasury and credited to the Commercial Driver License Fund for use by the Revenue Division of the Department of Finance and Administration; and

(ii) Fifty percent (50%) of the net amount shall be deposited into the State Treasury as trust funds and credited to the State Police Retirement Fund to be used for the State Police Retirement System.

(e) The office may issue a duplicate certificate of title without notice to a lienholder if the records of the office do not show that a lien exists against the motorboat.

(f)(1)(A) The office shall mail notice to a lienholder shown in the records of the office at the address shown in the records for the lienholder.

(B) The notice shall state that the lienholder must respond to the office within ten (10) business days from the date of the notice if the lien has not been released, or the duplicate certificate of title will be issued without recording the lien.

(2)(A) At the earlier of the time the lienholder responds indicating that the lien has been released or the expiration of the time for response by the lienholder, the office may issue a duplicate certificate of title without recording the name of the lienholder.

(B) If the lienholder timely responds indicating that the lien has not been released, the office may issue a duplicate certificate of title that places the name of the lienholder on the duplicate certificate title upon payment of all required lien notation and filing fees.

(g) Upon issuance of any duplicate certificate of title, the previous certificate of title shall be void.

27-101-1006. Grounds for refusing certificate of number or certificate of title.

A certificate of number or transfer of a certificate of number shall not be issued under § 27-101-301 et seq., nor shall a certificate of title be issued under this subchapter, if:

(1) The Office of Motor Vehicle has been provided with

information leading the office to reasonably believe that the relevant application contains any false or fraudulent statement;

(2) The applicant fails to furnish required information or reasonable additional information requested by the office;

(3) The office has reasonable grounds to believe that the motorboat is stolen or embezzled or that the granting of a certificate of number, the issuance of a certificate of title, or the transfer of a certificate of number would constitute a fraud against the rightful owner or other person having a valid lien upon the motorboat; or

(4) All the required fees have not been paid.

27-101-1007. Submission and receipt of reports and checking applications against indexes.

(a) The owner of or person having a lien or encumbrance upon a motorboat that has been stolen or embezzled may notify the Office of Motor Vehicle of the theft or embezzlement, but in the event of an embezzlement, may make a report only after having procured the issuance of a warrant for the arrest of the person charged with the embezzlement.

(b) Every owner or other person who has given any such notice shall notify the office of a recovery of the motorboat.

(c) The office upon receiving a report of a stolen or embezzled motorboat as provided in subsection (a) of this section shall file and appropriately index the report, shall immediately suspend the certificate of number or title of the stolen or embezzled motorboat, and shall not transfer the certificate of number or certificate of title of the stolen or embezzled motorboat until such time as the office is notified in writing that the stolen or embezzled motorboat has been recovered.

(d)(1) The office shall, at least one (1) time each week, compile and maintain a list of all motorboats that have been stolen, embezzled, or recovered as reported to the office during the preceding week.

(2) The lists shall be open to inspection by any law enforcement officer or other person interested in the motorboat.

(e) The office, upon receiving application for the certificate of number of a motorboat under § 27-101-301 et seq. or application for a certificate of title under this subchapter, shall first check the hull identification number or other identifying number shown in the application

against the indexes of registered motorboats and against the index of stolen and recovered motorboats required by this section to be maintained.

27-101-1008. Organization of records.

The Office of Motor Vehicle shall file each application received and issue a certificate of title if all the requirements are properly satisfied and shall register the motorboat with a certificate of number and keep a record of the application in suitable methods ensuring the records will be available as follows:

- (1) Under a distinctive certificate of number assigned to the motorboat;
- (2) Alphabetically, under the name of the owner;
- (3) Under the hull identification number, if available, otherwise any other identifying number of the motorboat; and
- (4) In any other manner to be decided at the discretion of the office.

27-101-1009. Issuance of certificate of title.

(a)(1) The Office of Motor Vehicle, upon registering a motorboat with a certificate of number under § 27-101-304 and upon receipt of a proper application and all required fees, shall issue a certificate of title.

(2) The certificate of title shall be of a type that, as nearly as possible, prevents the document from being altered, counterfeited, duplicated, or simulated without ready detection.

(b)(1)(A) The certificate of title shall contain upon its face the identical information required upon the face of the certificate of number.

(B) In addition, the certificate of title shall contain:

- (i) A statement of the owner's title to the motorboat;
- (ii) A statement of all liens and encumbrances on the motorboat described in the application for the certificate of title;
- (iii) A statement as to whether possession of the motorboat is held by the owner under a lease, contract of conditional sale, or other similar agreement; and
- (iv) If a certificate of title is issued as a certificate of title with beneficiary, the information required under § 27-

101-1013.

(2) The certificate of title shall bear the seal of the office.

(c)(1) The certificate of title shall contain upon the front side a space for the signature of the owner, and the owner shall write his or her name with pen and ink in the space upon receipt of the certificate of title, except when a surviving owner or a beneficiary applies for a new certificate of title with beneficiary under § 27-101-1013.

(2) The certificate of title shall also contain upon the reverse side forms for assignment of title or interest and warranty of title or interest by the owner, with space for notation of liens and encumbrances upon the motorboat at the time of a transfer.

(d)(1) The certificate of title shall be delivered to the owner in the event no lien or encumbrance appears thereon.

(2) Otherwise, the certificate of title shall be delivered either to the person holding the first lien or encumbrance upon the motorboat as shown in the certificate of title or to the person named to receive it in the application for the certificate of title.

27-101-1010. Certificate of title not renewed.

A certificate of title shall remain valid until cancellation by the Office of Motor Vehicle for cause or when a transfer in interest of the motorboat occurs.

27-101-1011. Expiration of certificate of title.

(a)(1) A certificate of title issued under this subchapter shall expire upon the determination by the Office of Motor Vehicle that the hull identification number on the motorboat is mutilated, destroyed, or obliterated.

(2) Upon expiration of a certificate of title under subdivision (a)(1) of this section, the office shall refer the owner of the motorboat to the Boating Law Administrator of the Arkansas State Game and Fish Commission to:

(A) Issue a primary hull identification number to the motorboat; and

(B) Verify that the owner of the motorboat permanently affixes the hull identification number to the motorboat in compliance with 33

C.F.R. Part 181, Subpart C, as in effect on January 1, 2017.

(b) After receipt of a proper application and payment of all required fees under this subchapter, the office shall issue a new certificate of title using the primary hull identification number issued as provided under subsection (a) of this section.

27-101-1012. Hull identification number verification.

(a)(1) The Department of Finance and Administration shall not issue, renew, or update ownership information for a certificate of number under § 27-101-304 or a certificate of title under this subchapter until the department determines whether the motorboat has a primary hull identification number meeting the requirements of 33 C.F.R. Part 181, Subpart C, as in effect on January 1, 2017.

(2) Verification of the hull identification number may include without limitation a submission of a clear and legible photograph or pencil rubbing of the hull identification number.

(b) Upon determination by the department that the motorboat does not have a hull identification number as required by subsection (a) of this section, the department shall refer the owner of the motorboat to the Boating Law Administrator of the Arkansas State Game and Fish Commission to:

(1) Assign a primary hull identification number; and

(2) Verify that the owner permanently affixes the hull identification number to the motorboat in compliance with 33 C.F.R. Part 181, Subpart C, as in effect on January 1, 2017.

27-101-1013. Certificate of title with beneficiary.

(a) As used in this section:

(1)(A) "Beneficiary" means one (1) person designated to become the owner of a motorboat upon the death of the current owner as indicated on the certificate of title issued under this chapter.

(B) "Beneficiary" does not include a business, firm, partnership, corporation, association, or any other legally created entity;

(2) "Certificate of title with beneficiary" means a certificate of title for a motorboat issued under this subchapter that indicates the present owner of the motorboat and designates a beneficiary as provided under this section; and

(3)(A) "Owner" means a person who holds legal title to a motorboat and may include more than one (1) person but not more than three (3) people.

(B) "Owner" does not include a business, firm, partnership, corporation, association, or any other legally created entity.

(b)(1) The owner or joint owners of a motorboat may submit a transfer-on-death application to the Office of Motor Vehicle to request the issuance of a certificate of title with beneficiary or a change to a certificate of title with beneficiary which directs the office to transfer the certificate of title upon the death of the owner or upon the death of all joint owners to the beneficiary named on the certificate of title with beneficiary.

(2) A transfer-on-death application shall contain:

(A) A statement as to whether the applicant seeks to add, remove, or change a beneficiary;

(B) The full legal name of the beneficiary;

(C) The Social Security number of the beneficiary;

(D) The address of the beneficiary;

(E) The hull identification number of the motorboat and, where applicable, the engine or motor serial number;

(F) The year, make, model, and body type of the motorboat;

(G) The printed full legal name of the owner of the motorboat;

(H) The driver's license or identification card number for the owner of the motorboat; and

(I) The signature of the owner of the motorboat.

(3) The applicant shall include the following with the transfer-on-death application:

(A) The certificate of title for the motorboat issued under this chapter;

(B) A certificate of title fee in the amount of two dollars (\$2.00);

(C) The certificate of title application fee in the amount of eight dollars (\$8.00); and

(D) The certificate of title with beneficiary processing fee in the amount of ten dollars (\$10.00).

(4) The proceeds collected under subdivision (b)(3)(C) of this

section shall be distributed as set out in § 27-101-1004(d).

(5)(A) The certificate of title with beneficiary processing fee remitted under subdivision (b)(3)(D) of this section shall be deposited into the State Central Services Fund for the benefit of the Revenue Division of the Department of Finance and Administration.

(B) The fee shall be credited as supplemental and in addition to all other funds as may be deposited for the benefit of the division.

(C) The fee shall not be considered or credited to the office as direct revenue.

(c)(1) The office shall not issue a certificate of title with beneficiary to an owner of a motorboat if:

(A) The motorboat is encumbered by a lien; or

(B) The owner holds his or her interest in the motorboat as a tenant in common with another person.

(2) If a lien request is made for a certificate of title with beneficiary, the beneficiary shall be removed and the lien added upon payment of all fees required under this chapter.

(d) The certificate of title with beneficiary issued by the office shall include after the name of the owner the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary.

(e) During the lifetime of the owner or before the death of the last surviving joint owner:

(1) The signature or consent of the beneficiary is not required for any transaction relating to the motorboat for which a certificate of title with beneficiary has been issued; and

(2) The certificate of title with beneficiary is revoked by:

(A) Selling the motorboat with proper assignment and delivery of the certificate of title to another person; or

(B) Filing an application with the office to remove or change a beneficiary as provided under subsection (b) of this section.

(f) Except as provided in subsection (e) of this section, the designation of the beneficiary in a certificate of title with beneficiary shall not be changed or revoked absent receipt of a court order requiring a change in the designation of beneficiary.

(g) The interest of the beneficiary in a motorboat on the death of the

owner or on the death of the last surviving joint owner is subject to any contract of sale, assignment, or security interest to which the owner of the motorboat was subject to during his or her lifetime.

(h)(1)(A) Upon the death of the owner, the office shall issue a new certificate of title for the motorboat to the surviving owner or, if there is no surviving owner, to the beneficiary if the surviving owner or beneficiary presents the following:

(i) Proof of death of the owner that includes a death certificate issued by the state or a political subdivision of the state;

(ii) Surrender of the outstanding certificate of title with beneficiary; and

(iii) An application and payment of all fees required under this chapter.

(B) A certificate of title issued under this subsection is subject to any existing security interest.

(2) If the surviving owner or beneficiary chooses, he or she can submit a completed certificate of title with beneficiary application as provided under this section, which shall be accompanied by all required fees, at the time of the application for a new certificate of title.

(3)(i) The transfer under this subsection is a transfer by operation of law, and § 27-101-1022 applies to the extent practicable and not in conflict with this section.

(ii) The transfer of a motorboat upon the death of the owner under this section is not testamentary and is not subject to administration under the Probate Code.

(j) The procedures and fees under §§ 27-101-1004 and 27-101-1029 shall apply for obtaining a duplicate certificate of title with beneficiary.

27-101-1014. Liens invalid without compliance.

A conditional sale contract, conditional lease, chattel mortgage, or other lien or encumbrance, or title retention instrument upon a motorboat, other than a lien dependent upon possession, is not valid against the creditors of an owner acquiring a lien by levy or attachment or subsequent purchasers or encumbrances, with or without notice, until the requirements of this subchapter have been satisfied.

27-101-1015. Instruments and jurisdiction.

(a) There shall be deposited with the Office of Motor Vehicle a copy of the instrument creating and evidencing a lien or encumbrance, which is to be executed in the manner required by the laws of this state and accompanied by the certificate of title last issued for the motorboat.

(b) If a motorboat is subject to a security interest when brought into this state, the validity of the security interest is determined by the law of the jurisdiction where the motorboat was when the security interest attached, subject to the following:

(1) If at the time the security interest attaches the parties understand that the motorboat will be kept in this state and the motorboat is in this state within thirty (30) days after attachment for purposes other than transportation through this state, the validity of the security interest in this state is determined by the law of this state;

(2) If a security interest is perfected under the law of the jurisdiction where the security interest attached, the following rules apply:

(A) If the name of the lienholder is shown on an existing certificate of title issued by that jurisdiction, the lienholder's security interest continues perfected in this state; or

(B)(i) If the name of the lienholder is not shown on an existing certificate of title issued by that jurisdiction, the security interest continues perfected in this state for four (4) months after a first certificate of title of the motorboat is issued in this state and also thereafter if, within the four-month period, it is perfected in this state.

(ii) Perfection dates from the time of perfection in this state if the security interest is perfected in this state after the expiration of the four-month period;

(3) If the security interest is not perfected under the law of the jurisdiction where the security interest attached, the security interest may be perfected in this state, and perfection dates from the time of perfection in this state; or

(4) A security interest may be perfected either under subdivision (b)(2)(B) of this section or subdivision (b)(3) of this section as provided in subsection (a) of this section.

(c) If the motorboat is not registered with a certificate of number and a certificate of title has not been issued for the motorboat, the certified

copy of the instrument creating the lien or encumbrance shall be accompanied by an application by the owner in usual form for an original registration and issuance of an original certificate of title and any fees as required under this chapter.

27-101-1016. Statement of liens – Issuance.

Upon receipt of an application for a certificate of title accompanied by the documents and fees required under this subchapter, the Office of Motor Vehicle shall:

(1) File the application and documents with the date and hour the application and documents were received noted on the application; and

(2) If the application requirements are properly satisfied, issue a new certificate of title in the name of the owner and a statement of all liens or encumbrances certified to the office existing against the motorboat.

27-101-1017. Filing as constructive notice.

(a) The filing and issuance of a new certificate of title as provided in this chapter shall constitute constructive notice of all liens and encumbrances against the motorboat described in the certificate of title to creditors of the owner, subsequent purchasers, and encumbrancers, except those liens as may be authorized by law dependent upon possession.

(b)(1) A lien is perfected on the date of execution if the documents required under § 27-101-1015 are filed with the Office of Motor Vehicle within thirty (30) days from the date of execution.

(2) Otherwise, constructive notice shall date from the time of receipt and filing of the documents by the office noted on the application as required under § 27-101-1016.

27-101-1018. Optional means of recording.

(a)(1) At his or her option, a lienholder may:

(A) Record the lien on the manufacturer's certificate of origin;

(B) Record the lien on an existing certificate of title; or

(C) File with the Revenue Division of the Department of Finance and Administration a certified copy of the instrument creating and evidencing the lien or encumbrance.

(2) The lienholder shall remit a fee in the amount of one dollar (\$1.00) for each lien filed.

(3) The recording or filing shall constitute constructive notice of the lien against the motorboat described therein to creditors of the owner, subsequent purchasers, and encumbrancers, except those liens that are by law dependent upon possession.

(4) A photocopy of the manufacturer's certificate of origin or of an existing certificate of title, showing the lien recorded thereon and certified as a true and correct copy by the party recording the lien, shall be sufficient evidence of the recording.

(b)(1)(A) The lien shall be deemed perfected and the constructive notice shall be effective from the date of the execution of the instrument creating and evidencing the lien or encumbrance if it is filed as authorized in this section within thirty (30) days after the date of the execution thereof.

(B) If the instrument is filed more than thirty (30) days after the date of the execution thereof, the lien shall be deemed perfected and the constructive notice shall date from the time of the filing of the instrument.

(2) However, the filing of a lien under this section by the lienholder and the payment of the required fee shall in no way relieve any person of the obligation of paying the fee required by law for filing a lien to be evidenced on a certificate of title of a motorboat.

27-101-1019. Methods exclusive – Exception.

(a) The methods provided in this subchapter of giving constructive notice of a lien or encumbrance upon a motorboat shall be exclusive except as to liens dependent upon possession.

(b) Any lien, or encumbrance, or title retention instrument filed as provided in this subchapter, and any documents evidencing them, are exempted from the provisions of law which otherwise require or relate to the recording or filing of instruments creating or evidencing title retention or other liens or encumbrances upon motorboats.

27-101-1020. Misdemeanor and penalty.

(a) It is a Class C misdemeanor for any person to fail or neglect to

enter the transferee's name on a properly endorsed certificate of title or fail or neglect to properly endorse and deliver a certificate of title to a transferee or owner lawfully entitled to the certificate of title.

(b) A person found to be in possession of a motorboat with an improperly assigned certificate of title that fails to identify the transferee shall immediately establish ownership of the motorboat, register the motorboat with a certificate of number, and pay all required fees and penalties.

27-101-1021. Obligations of transferee.

(a)(1) The transferee of a motorboat shall apply for, or cause to be applied for, a registration with a certificate of number under § 27-101-304 and the issuance of a certificate of title under this subchapter within thirty (30) days after the date of the release of lien by a prior lienholder, as provided in § 27-101-1024, or thirty (30) days after the date of the transfer if no lien exists.

(2) A motorboat shall not be operated upon the waters of this state for more than thirty (30) days after the release of lien by a prior lienholder as provided in § 27-101-1024, or thirty (30) days after the transfer date if no lien exists, unless a valid registration with a certificate of number and certificate of title have been issued under this chapter.

(b) A transferee shall at the same time present the certificate of title, properly endorsed and assigned, to the Office of Motor Vehicle and apply for and obtain a new certificate of title for the motorboat, except as otherwise provided in § 27-101-1022.

(c)(1)(A) It is unlawful for a dealer or other person who sells or finances the purchase of a motorboat subject to registration with a certificate of number in this state to use a title retention note to secure his or her interest in the motorboat.

(B) As used in this section, a "title retention note" means any instrument that grants the purchaser the right to possession and use of the motorboat, but withholds assignment of ownership on the existing certificate of title and its delivery to the purchaser, until full payment has been made by the purchaser, which makes it impossible for the purchaser to comply with subsection (b) of this section.

(2) It shall be a Class C misdemeanor for a motorboat dealer or other seller to fail to comply with this subsection.

(d) This section is not intended to limit the rights of a lienholder to perfect or record his or her security interest in a motorboat as provided under §§ 27-101-1014 and 27-101-1019.

27-101-1022. Transfer by operation of law.

(a) Whenever the certificate of title or interest of an owner in or to a registered motorboat is transferred to another person by a method other than voluntary transfer, the registration and certificate of title of the motorboat shall expire, and the motorboat shall not be operated upon the waterways of this state for more than thirty (30) days after the date of transfer.

(b)(1) Upon transfer, the new owner shall secure a new registration with a certificate of number under § 27-101-304 and a new certificate of title under this subchapter, if the new owner submits to the Office of Motor Vehicle:

(A) The application and documents required to be submitted with the application;

(B) Payment of all required fees;

(C) Presentation and surrender of the last certificate of title;

(D) Evidence that the lien or encumbrance was previously recorded in this state; and

(E) The instruments or documents of authority, or certified copies of the instruments or documents of authority, as may be sufficient or required by law to evidence or effect a transfer of certificate of title or interest in or to chattels in this case.

(2)(A) If the motorboat to be registered with a certificate of number and titled was previously registered with a certificate of number in a jurisdiction other than Arkansas and if the name of the new owner as lienholder is not shown on the existing certificate of title, a certificate of title shall not be issued to the new owner under this section.

(B) Instead, the new owner may secure a new registration and certificate of title by obtaining an order issued by a court of competent jurisdiction directing issuance of the new registration with certificate of

number and certificate of title.

(3) The new owner, upon transferring his or her certificate of title or interest to another person, shall execute and acknowledge an assignment and warranty of title upon the certificate of title previously issued, if available, and deliver it, as well as the documents of authority or certified copies of the documents of authority, as may be sufficient or required by law to evidence the rights of the person, to the person to whom the transfer is made.

27-101-1023. Assignment without consent of owner.

(a) A person holding a lien or encumbrance upon a motorboat, other than a lien dependent solely upon possession, may assign his or her certificate of title or interest in or to the motorboat to a person other than the owner without the consent of the owner, and without affecting the interest of the owner or the registration with certificate of number of the motorboat, but in this event, he or she shall give to the owner a written notice of the assignment.

(b) The Office of Motor Vehicle, upon receiving a certificate of title, along with all required fees, assigned by the holder of a lien or encumbrance shown thereon and giving the name and address of the assignee, shall issue a new certificate of title as upon an original application.

27-101-1024. Release of lien by lienholder – Disclosure of information.

(a) As used in this section, "final payment" means an item is paid when a payee bank or person has:

(1) Paid for the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule, or agreement.

(b) For purposes of this section, a lien or encumbrance is satisfied when the lienholder receives final payment.

(c)(1) Upon the satisfaction of any lien or encumbrance on a motorboat for which the certificate of title is in the possession of the lienholder, the lienholder shall within ten (10) business days from the date of receipt

of final payment execute a release of the lien or encumbrance in the space provided in the certificate of title, or as the Office of Motor Vehicle prescribes, and mail or deliver the certificate of title and the release of lien or encumbrance to the next lienholder named in the certificate of title or, if none, to the owner or to any person who delivers to the lienholder an authorization from the owner to receive the certificate of title.

(2) Upon the satisfaction of a lien or encumbrance on a motorboat for which the certificate of title is in the possession of a prior lienholder, the lienholder whose lien or encumbrance is paid in full shall within ten (10) business days of receipt of final payment execute a release of lien or encumbrance in the form the office prescribes and deliver the release of lien or encumbrance to the owner or to any person who delivers to the lienholder an authorization from the owner to receive it.

(d) A lienholder named in a certificate of title shall upon written request of the owner or of another lienholder named on the certificate of title disclose any pertinent information as to his or her security agreement and the indebtedness secured.

(e)(1) A lienholder who fails to comply with subsection (c) of this section shall pay to the person or persons satisfying the lien or encumbrance twenty-five dollars (\$25.00) for the first five (5) business days after expiration of the time period prescribed in subsection (c) of this section, and the payment shall double for each five (5) days thereafter in which there is continued noncompliance, up to a maximum of five hundred dollars (\$500) for each lien.

(2) If delivery of the certificate of title is by mail, the delivery date is the date of the postmark for purposes of this subsection.

27-101-1025. Reregistration and issuance of a new title – Filing.

(a) When satisfied as to the genuineness and regularity of the transfer of a motorboat and of the right of the transferee to receive a new registration and certificate of title under this chapter, the Office of Motor Vehicle shall reregister the motorboat under § 27-101-304 and issue a new certificate of title under this subchapter as upon an original application.

(b) The request for reregistration and issuance of a new certificate of title shall be accompanied by:

(1) A properly endorsed certificate of title;

(2) A completed application for registration and certificate of title as required in this chapter;

(3) If applicable, proof the motorboat or personal watercraft is covered by a liability insurance policy issued by an insurance company authorized to do business in this state;

(4) Payment of all required fees; and

(5) Any other documents that may be required by the office.

(c) The office shall:

(1) Retain and appropriately file every surrendered certificate of title; and

(2) Maintain the file required under subdivision (c)(1) of this section to permit the tracing of the certificate of title.

27-101-1026. Transferor not liable for negligent operation.

(a) The owner of a motorboat who has made a bona fide sale or transfer of his or her certificate of title or interest and who has delivered possession of the motorboat to the purchaser or transferee is not liable for any damages resulting from negligent operation of the motorboat by another person.

(b) The selling or transferring owner, upon delivery of possession of the motorboat, is not liable for any damage or negligence if the selling or transferring owner:

(1) Delivers the certificate of title, properly endorsed and dated with the date of the endorsement, to the purchaser or transferee;

(2) Delivers to the Office of Motor Vehicle or placed in the United States mail, addressed to the office, the notice as provided in § 27-101-1027; or

(3) Delivers to the office or places in the United States mail, addressed to the office, the appropriate documents and fees for registration of the motorboat to the new owner under the sale or transfer.

27-101-1027. Notice of sale or transfer.

(a) Whenever the owner of a motorboat registered with a certificate of number under this chapter sells or transfers the certificate of title or interest in and delivers possession of the motorboat to another person, the owner may notify the Office of Motor Vehicle of the sale or transfer.

(b) The notice shall provide the following information:

- (1) The date of the sale or transfer;
- (2) The name and address of the owner and of the transferee;
- (3) The hull identification number;
- (4) The identifying number assigned to the motorboat under § 27-101-301 et seq.;
- (5) A description of the motorboat; and
- (6) Any other information that may be required by the office.

27-101-1028. Time requirements for payment of lien or encumbrance.

(a) As used in this section:

- (1) "Customer" means a person who trades in or otherwise provides a motorboat to a motorboat dealer for resale;
- (2) "Motorboat dealer" means a recognized motor boat dealer; and
- (3) "Subsequent purchaser" means a person who buys the motorboat that was provided to the motorboat dealer as a trade-in or for resale by the customer.

(b)(1) If a motorboat dealer takes possession of a motorboat for purposes of resale and there is an outstanding lien or encumbrance on the motorboat, the motorboat dealer shall in good faith tender full payment on the outstanding lien or encumbrance within ten (10) business days after the motorboat dealer takes possession of the motorboat from the customer.

(2) This time period may be shortened if the customer and the motorboat dealer agree to a shorter time period.

(c)(1) If the motorboat dealer fails to act in good faith in tendering full payment for the outstanding lien or encumbrance within ten (10) business days or within the time period agreed to by the motorboat dealer and the customer under subdivision (b)(2) of this section, the customer shall have an absolute right to cancel the contract for sale between the customer and the motorboat dealer.

(2) If the contract for sale is canceled under subdivision (c)(1) of this section, the motorboat dealer shall be responsible for late fees, finance charges, or any financial penalty that is required to be made by the customer as part of the existing lien or encumbrance.

(d)(1) If the motorboat dealer sells the motorboat to a subsequent purchaser without first tendering full payment for the outstanding lien or

encumbrance, the subsequent purchaser who buys the motorboat subject to the existing lien or encumbrance shall have an absolute right to cancel the contract for sale between the subsequent purchaser and the motorboat dealer.

(2) If the contract for sale is canceled under subdivision (d)(1) of this section, the motorboat dealer shall be responsible for late fees, finance charges, or any financial penalty that is required to be made by the subsequent purchaser as part of the existing lien or encumbrance.

27-101-1029. Fees.

(a) Except as otherwise provided, all fees required under this chapter shall be paid to the Office of Motor Vehicle.

(b) The following fees are charged under this subchapter by the Director of the Department of Finance an Administration:

- (1) Certificate of title with beneficiary processing Fee.....\$10.00
- (2) Duplicate title fee..... 2.00
- (3) Lien filing fee..... 1.00
- (4) Lien notation fee..... .50
- (5) Title application fee..... 8.00
- (6) Hull identification fee..... 25.00

27-101-1030. Rules.

The Director of the Department of Finance and Administration may promulgate rules for the administration of this subchapter.

/s/B. Sample

APPROVED: 4/5/19