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## OLR Bill Analysis

### sSB 418

#### ***AN ACT ADOPTING THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT AND THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT.***

#### **SUMMARY:**

This bill enacts the Uniform Electronic Legal Material Act (UELMA) and the Uniform Certificate of Title for Vessels Act (UCOTVA).

UELMA provides for the authentication and preservation of electronic records of legal material published by the state (e.g., the General Statutes or court cases). The bill does not require the state to publish legal material electronically, but sets certain requirements if it does so and designates the record as official. Among other things, the bill specifies circumstances in which electronic records of legal material are presumed to be authentic copies of the material.

UCOTVA creates a certificate of title system for certain vessels that are principally used on Connecticut waters. It requires the Department of Motor Vehicles (DMV) to issue the certificates; sets rules for perfecting security interests on certificates and indicating transfers of interests in vessels; requires DMV to maintain certain information in indexed files for public searches; and imposes fees for DMV filings and searches.

EFFECTIVE DATE: January 1, 2015; except (1) July 1, 2013, for UELMA and (2) October 1, 2012, for the provision excluding records relating to vessels and their certificates of titles from the restrictions on DMV disclosures of personal information.

#### **UNIFORM ELECTRONIC LEGAL MATERIAL ACT**

##### ***§ 2-3 — Applicability and Definitions***

The bill's UELMA provisions apply to all legal material in an electronic record that is designated as official under the bill and first

published electronically on or after July 1, 2013. Thus, in addition to new material, the provisions apply to older material being converted into an electronic format if that format is designated as the official version (see below).

The following definitions apply in the bill's UELMA provisions.

"Legal material" means the following, whether or not they are in effect: the state constitution; the General Statutes; state agency regulations; and reported decisions of the state Supreme, Appellate, and Superior Courts.

The "official publisher" of legal material varies depending on the legal material. The secretary of the state is the official publisher of the state constitution and state agency regulations. The Joint Committee on Legislative Management is the official publisher of the General Statutes. The Commission on Official Legal Publications is the official publisher of reported court decisions.

A "state" means a U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to U.S. jurisdiction.

#### **§ 4 — *Legal Material in Official Electronic Records***

Under the bill, if an official publisher publishes legal material only in an electronic record, the publisher must (1) designate the electronic record as official and (2) comply with the bill's provisions on authentication (§ 5), preservation and security (§ 7), and permanent public access (§ 8).

If the official publisher publishes legal material in both an electronic and non-electronic record, it can designate the electronic record as official if it complies with the provisions noted above.

#### **§ 5 — *Authentication of Official Electronic Records***

The bill requires the official publisher to authenticate an official electronic record. To do so, the publisher must provide a way for a user to determine that the record he or she receives from the official

publisher is the same as the version that the publisher designated as the official version. (The bill does not specify how a publisher might do this.)

### **§ 6 — *Effect of Authentication***

Under the bill, authenticated legal material in an electronic record is presumed to be an accurate copy of the legal material. Someone contesting such an authentication has the burden of proving by a preponderance of the evidence that the record is not authentic.

The bill provides that if another state has adopted a law substantially similar to the bill's UELMA provisions, and an official publisher in that state designates as official and authenticates legal material in an electronic record, the record is presumed to be an accurate copy of the material.

### **§ 7 — *Preservation and Security***

The bill requires an official publisher of legal material in an electronic record that is or was designated as official to provide for the record's preservation and security, in either electronic form or otherwise. Publishers that preserve such material electronically must (1) ensure the record's integrity, (2) provide for its backup and recovery in case of disaster, and (3) ensure the material's continuing usability.

### **§ 8 — *Public Access***

Official publishers of legal material in an electronic record that must be preserved under the bill must ensure that the material is reasonably and permanently available for public use.

### **§ 9 — *Standards***

The bill requires official publishers of legal material in electronic records, in implementing the bill's UELMA provisions, to consider:

1. other jurisdictions' standards and practices;
2. the most recent standards promulgated by national standard-setting bodies, and any standards or guidelines that the state

librarian or public records administrator establishes, regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records;

3. the needs of the material's users;
4. the views of governmental officials, governmental entities, and other interested persons; and
5. to the extent practicable, methods and technologies for giving public access to and authenticating, preserving, and securing legal material, that are compatible with those used by other official publishers in Connecticut and other states that have adopted a law substantially similar to UELMA.

**§ 10 — Uniformity of Application and Construction**

The bill specifies that in applying and construing UELMA, consideration must be given to the need to promote uniformity of law with respect to its subject matter among states that enact UELMA.

**§ 11 — E-SIGN Act**

The bill provides that its UELMA provisions modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act. But they do not (1) modify, limit, or supersede E-SIGN's provisions on consumer disclosures (such as when consumers are considered to have consented to electronic disclosures) or (2) authorize electronic delivery of specified notices that are not subject to E-SIGN (see BACKGROUND).

**UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT**

**§§ 16-17 — Certificate Requirement**

The bill requires the owner of certain vessels principally used in Connecticut to apply to DMV, with the appropriate fee, for a certificate of title within 20 days after the later of (1) transferring ownership or (2) Connecticut becoming the state on whose waters the vessel is or will be used, operated, navigated, or employed more than on the waters of

any other state during a calendar year (i.e., state of principal use).

Under the bill, a vessel becomes covered by a certificate of title when an application and fee are delivered to (1) DMV or (2) the agency that creates a certificate in another jurisdiction. The law of the jurisdiction of the vessel's certificate of title governs all issues relating to the certificate from the time the certificate covers the vessel until it (1) is covered by another certificate or (2) becomes a documented vessel. This applies even if there is no relationship between the jurisdiction and the vessel or its owner.

**§§ 13 & 17 — Vessels Excluded from the Certificate Requirement**

The bill does not require a certificate of title for a:

1. vessel designated by the manufacturer as having a model year of 2015 or earlier;
2. vessel manufactured or assembled prior to January 1, 2016, for which the manufacturer or assembler has not designated a model year, other than a vessel (a) for which another state has issued a certificate when Connecticut becomes the state of principal use or (b) having Connecticut as the state of principal use that was a documented vessel or a foreign documented vessel when it becomes no longer such a vessel;
3. documented vessel (a vessel covered by a certificate of documentation issued by the U.S. Coast Guard under federal law, which applies to some large vessels and those owned by a federal entity);
4. foreign-documented vessel (a vessel recorded in another country's registry that identifies ownership interests and includes a unique alphanumeric designation for the vessel);
5. barge (a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device);
6. vessel before delivery if it is under construction or completed

- under a contract;
- 7. vessel held by a dealer for sale or lease;
- 8. seaplane;
- 9. amphibious vehicle covered by a motor vehicle certificate of title in this or another state;
- 10. watercraft less than 19.5 feet in length and propelled solely by sail, paddle, or oar;
- 11. watercraft operating only on a permanently fixed, manufactured course with movement restricted to or guided by a mechanical device that is attached to or controls the watercraft;
- 12. stationary floating structure that (a) does not have and is not designed to have its own mode of propulsion; (b) needs a continuous hookup to shore for utilities; and (c) does not have sewage facilities or has a permanent, continuous hookup to shore for sewage;
- 13. watercraft owned by the United States, a state, a foreign government, or a political subdivision; or
- 14. lifeboat on another watercraft.

**§ 18 — Certificate Application Requirements**

With exceptions specified in the bill, only an owner can apply for a certificate of title. The owner must file and sign an application form approved by the DMV commissioner, containing:

- 1. the applicant's name, principal residential street address, and, if different, mailing address;
- 2. the name and mailing address of other owners of the vessel;
- 3. the vessel's hull identification number or an application to the Department of Energy and Environmental Protection for one;

4. the vessel number or an application for one (existing law requires owners to register vessels and obtain vessel registration numbers from DMV);
5. a description of the vessel as required by DMV, including (a) any official number assigned by the U.S. Coast Guard; (b) the manufacturer's, builder's, or maker's name; (c) the vessel's model year or the year its construction was completed; and (d) the vessel's overall length, type, hull material, propulsion type, engine drive type, and fuel type;
6. all security interests in the vessel known to the applicant and the secured parties' names and mailing addresses;
7. a statement that the vessel is not a documented or foreign-documented vessel;
8. if the application is made because of a transfer of ownership, the transferor's name, street address and, if different, mailing address; sales price, if any, and transfer date;
9. if the vessel previously was registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered or titled; and
10. any further information the DMV commissioner reasonably requires to identify the vessel and determine whether the owner is entitled to a certificate and the existence or nonexistence of security interests.

The bill allows an application for a certificate of title to contain the owner's, transferor's, or secured party's email address.

With exceptions specified in the bill, the bill also requires the application to include a certificate of title signed by the owner shown on the certificate that (1) identifies the applicant as the owner or (2) is accompanied by a record that identifies the applicant as the owner. When there is no certificate of title, the owner must submit:

1. if the vessel was a federally-documented vessel, a U.S. Coast Guard record showing the (a) vessel is no longer a documented vessel and (b) applicant is the owner;
2. if the vessel was a foreign-documented vessel, a record from the foreign country showing the (a) vessel is no longer a foreign-documented vessel and (b) applicant is the owner; or
3. in all other cases, a certificate of origin (a record created by a manufacturer or importer as the proof of a vessel's identity, but not a builder's certificate), bill of sale, or other record that, to DMV's satisfaction, identifies the applicant as the owner.

The bill makes a record submitted in connection with an application part of the application and requires DMV to keep the record in its files.

Under the bill, DMV may also require payment or evidence of payment of any or all fees and taxes payable by the applicant under state law, other than fees paid in connection with the application or the acquisition or use of the vessel.

**§ 19 — Creation, Rejection, or Cancellation of a Certificate**

The bill requires DMV to create a certificate for a vessel after delivery of an application that satisfies the bill's requirements. But it can reject an application if:

1. it does not comply with the bill or state law;
2. it does not contain sufficient documentation to determine whether the applicant is entitled to a certificate;
3. there is a reasonable basis to conclude that the application is fraudulent or issuing a certificate would facilitate fraud or an illegal act; or
4. the vessel is a documented or a foreign-documented vessel.

The bill allows DMV to cancel (make ineffective) a certificate it created if DMV:

1. could have rejected the application under the bill's requirements,
2. is required to cancel it under the bill's provisions, or
3. receives satisfactory evidence that the vessel is a documented or foreign-documented vessel.

**§§ 20 & 40 — Contents of Certificate**

The bill requires a certificate of title to contain:

1. the date it was created;
2. the owner of record's name and mailing address and, if not all owners are listed, an indication that there are additional owners in DMV's files;
3. the hull identification number;
4. a description of the vessel including the information the owner must submit in the application;
5. except as otherwise provided in the bill, the name and mailing address of the secured party of record and, if not all secured parties are listed, an indication that there are other security interests in DMV's files; and
6. other data the DMV commissioner requires.

The bill permits DMV to note on a certificate the name and mailing address of a secured party that is not a secured party of record.

If DMV's files indicate that a vessel was previously registered or titled in a foreign country, the bill requires DMV to indicate on the certificate that the vessel was registered or titled in that country.

The bill requires a written certificate of title to contain a form that (1) allows all owners indicated on the certificate to sign to consent to a transfer of an ownership interest and (2) includes a certification, signed under penalty of false statement, that the statements made are true and correct to the best of each owner's knowledge, information, and belief.

The bill specifies that the information required under this provision is a public record unless the law provides otherwise (§ 21(e)).

**Required Statement.** The bill requires a certificate of title to state that the vessel may be subject to security interests not shown on the certificate when (1) Connecticut becomes the vessel's state of principal use in place of another state; (2) the vessel was not a documented or foreign-documented vessel immediately before the certificate application; and (3) the vessel's immediately previous state of principal use did not issue or does not require a certificate of title for the vessel.

**§§ 19 & 22 — Written or Electronic Certificates**

The bill imposes the following rules on creating written or electronic certificates.

1. If DMV creates electronic certificates of title, it can only issue a written one if requested in an application by the (1) secured party of record (the secured party indicated in DMV's files or the first secured party indicated if there is more than one) or (2) if none, the owner of record (the owner indicated in DMV's files or the first owner indicated if there is more than one).
2. DMV must send a written certificate to the secured party of record or, if none, the owner of record, at the person's address in DMV's files.
3. DMV must send a record evidencing an electronic certificate to the owner of record and, if there is one, the secured party of record, at the person's mailing address or, if indicated, electronic address.
4. Creating a written certificate cancels an electronic certificate and DMV must maintain the date and time of cancellation in its files.
5. A person holding a written certificate must surrender it to DMV before DMV can create an electronic certificate.

6. If DMV creates an electronic certificate, it must destroy or cancel the surrendered written certificate and maintain the date and time of destruction or cancellation in its files. If a written certificate is not destroyed, DMV must indicate on the certificate's face that it has been canceled.

**§ 23 — *Effect of Certificate***

The bill makes a certificate of title prima facie evidence of the accuracy of the information in it and a certified copy of it is prima facie evidence of ownership in a criminal proceeding.

**§ 32 — *Replacement Certificates***

When a written certificate of title is lost, stolen, mutilated, destroyed, or becomes unavailable or illegible, the bill allows a secured party of record or, if there is none in DMV's files, the owner of record, to apply for a replacement certificate. The application must be signed and, except as otherwise permitted by DMV, meet the requirements for an original application. The application must include the existing certificate unless it is unavailable.

The bill requires a replacement certificate to contain the same information as an original certificate with an indication that it is a replacement certificate. If a person receiving a replacement certificate subsequently obtains the original written certificate, he or she must destroy the original.

**§§ 21 & 44 — *Documents and Information in DMV Files***

For each record relating to a certificate of title, the bill requires DMV to maintain (1) the hull identification number and (2) all the information submitted with the application to which the record relates, including the date and time the record was delivered to DMV. DMV must maintain the files for public inspection and index them.

DMV must maintain in its files (1) the information contained in all certificates it creates, searchable by the vessel's number and hull identification number, owner of record's name, and any other method DMV uses; (2) all secured parties and people claiming an ownership

interest that DMV knows about; and (3) all stolen-property reports received.

The bill requires DMV to give federal, state, or local governments the information in its files relating to any vessel for which it issued a certificate, on request for safety, security, or law-enforcement purposes.

The bill exempts records related to vessels and their certificates of title from the law's restrictions on DMV disclosing personal information or permitting inspection of motor vehicle records containing personal information.

**§ 35 — *DMV Retention of Evidence and Information***

The bill requires DMV to retain:

1. the evidence used to determine the accuracy of information in its files relating to the current ownership of a vessel and the information on the certificate of title and
2. all information received regarding a security interest in a vessel for at least 10 years after receiving a termination statement for the security interest, with the information accessible by hull identification number and other methods the department provides.

**§ 35 — *Requests to DMV for Information***

The bill requires DMV to send or make available in a record certain information to anyone that requests it and pays all applicable fees. Generally, DMV must disclose whether its files include a certificate of title, security interest, or termination statement for a vessel identified by a hull identification or vessel number or owner. The information must be as of a date specified by DMV, but no more than 10 calendar days before receiving the request. For a request related to a vessel, DMV must provide:

1. the name and address of any owner or secured party in the files or on the certificate of title, the effective date of information

related to a secured party, and a copy of any termination statement in the files and its effective date and

2. a copy of any certificate of origin, secured party transfer statement, transfer-by-law statement, and other evidence of previous or current transfers of ownership.

The bill allows DMV to provide requested information in any medium but, on request and payment of fees, in a written document.

***Acknowledgment of Submissions.*** The bill allows a person who submits a record or information to DMV to request an acknowledgment of the submission. DMV must send an acknowledgment showing the (1) hull identification number of the vessel to which the record or submission relates, (2) information in the filed record or submission, and (3) date and time the record was received or the submission accepted. The request must contain the hull identification number and be delivered by a DMV-authorized means.

#### **§§ 39 & 40 — DMV Forms and Fees**

The bill requires the DMV commissioner to prescribe and provide suitable forms for applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out the bill's provisions.

The bill sets the following DMV fees:

1. \$25 for filing an application for a certificate of title;
2. \$10 for each security interest or assignment of one noted on a certificate or maintained in the electronic title file;
3. \$20 for each record copy search;
4. \$25 for an application for a duplicate certificate (but a fee for the duplicate certificate is not required);
5. \$10 for filing (a) a notice of a security interest, (b) an assignment of a security interest, or (c) a termination statement relating to a

security interest;

6. \$25 for filing a (a) secured party's transfer statement or (b) transfer-by-law statement;
7. \$25 for filing an application for transfer of ownership or termination of a security interest without a certificate of title;
8. \$20 for each name or hull identification number in a certificate of search of the DMV records;
9. \$20 for search of a vessel certificate of title record, when requested by someone other than the vessel's owner of record; and
10. \$20 for a certified copy of any documentation, information, or record maintained or created by DMV.

The bill requires DMV to collect a penalty in an amount equal to the corresponding transaction fee when an application, certificate, or other document to be mailed or delivered to DMV is not delivered within 10 days from the bill's deadline for mailing or delivery.

The bill exempts from the fees vessels (1) leased to a state agency or (2) owned by the state, a state agency, or a municipality.

**§§ 40-42 — DMV Proceedings, Rules, and Regulations**

To carry out the bill's provisions, the commissioner can (1) conduct necessary investigations to procure required information and (2) adopt and enforce reasonable rules.

The bill requires the commissioner to adopt regulations about including title brands (a designation of previous damage, use, or condition) on certificates of title. The commissioner must consider whether special branding categories like "hull damaged" should be included.

The bill allows the commissioner to adopt regulations to (1) implement the bill's provisions and (2) place additional indications on

a certificate concerning the condition or status of a vessel's title. These regulations must provide an opportunity for a hearing for anyone aggrieved by any DMV action, omission, or decision. Under the bill, anyone aggrieved by a DMV action, omission, or decision (1) is entitled to an administrative hearing on request and (2) can appeal to the Superior Court in the judicial district of New Britain after completing the administrative proceedings.

**§§ 13 & 25 — Security Interests in Vessels**

By law, a creditor's interest (a "security interest") can attach to the debtor's property. A secured party who "perfects" his or her security interest has priority over other parties, such as a creditor who gets a judicial lien, bankruptcy trustee, and others who later take a security interest in the collateral.

Under the bill, a security interest in a vessel is generally the same as for other secured transactions. The bill specifies that it does not include the special property interest of a buyer of a vessel on identification of that vessel to a contract for sale but a buyer may also acquire a security interest by complying with the secured transaction laws. Except as provided in other law, the bill provides that a seller's or lessor's rights under the Uniform Commercial Code to retain or acquire possession of the vessel is not a security interest, but they may acquire a security interest by complying with the secured transactions law. The retention or reservation of title by a seller of a vessel notwithstanding shipment or delivery to the buyer under the Uniform Commercial Code's provisions is limited to a reservation of a security interest.

Under current law, a security interest in a vessel is usually perfected by filing a financing statement in the secretary of the state's office. The bill instead requires filing an application with DMV (1) for a certificate of title or (2) to add a security interest to a certificate already created by DMV.

For an application for a certificate of title, the bill specifies that identifying someone as owner, lessor, consignor, or bailor alone does not make someone a secured party.

When a DMV-issued certificate of title already exists, the bill allows DMV to set the application form but requires it to include the owner's or secured party's signature and the:

1. owner of record's name;
2. secured party's name and mailing address;
3. vessel's hull identification number; and
4. certificate, if DMV created a written one.

**When Security Interest Perfected.** Under the bill, perfection occurs on the later of the application's delivery and payment of applicable fees to DMV or attachment of the security interest under the law on secured transactions.

**New Certificate.** On delivery of an application and payment of applicable fees, the bill requires DMV to create a new certificate and deliver it in the same way as when it creates an original certificate. DMV must maintain in its files the date and time of an application's delivery to the department.

**Assignment.** Under the bill, if a secured party assigns a perfected security interest in a vessel, DMV need not receive a statement providing the assignee's name as secured party to continue the perfected status of the security interest against creditors of, and transferees from, the original debtor. But a purchaser who obtains a release from the secured party indicated in the DMV files or on the certificate takes free of a transferee's security interest and rights unless the transfer is indicated in DMV's files or on the certificate.

**Exceptions from the Bill's Requirements.** The bill excludes from these provisions security interests in a vessel:

1. that is inventory held for sale or lease by the person creating the interest;
2. that is leased by the person as lessor if the person is in the

business of selling vessels;

3. for which a certificate of title is not permitted (or a barge, for which a certificate is not required); or
4. before delivery if the vessel is under construction, or completed, pursuant to contract and for which no application for a certificate has been delivered to DMV.

**Other Provisions.** The bill preserves perfection of a security interest for four months or until it is perfected under the bill, whichever is sooner, when (1) a certificate of documentation for a documented vessel is deleted or canceled and (2) a security interest in the vessel was valid immediately before deletion or cancellation against a third party as a result of compliance with federal law.

For certain types of security interests in a vessel, the bill specifies that the interest is perfected on attachment but becomes unperfected when the debtor possesses the vessel, unless the security interest is perfected under the bill. This applies to Uniform Commercial Code provisions governing reservations of security interests after passage of title or a seller's shipment of goods and a buyer's or lessee's security interest on rejection of goods.

The bill requires provisions of other secured transactions law to apply to security interests (1) in a vessel as proceeds of other collateral or (2) perfected under the law of another jurisdiction.

#### **§ 26 — Termination Statement by Secured Party**

Under the bill, a security interest ceases to be perfected when a termination statement authorized by the secured party is delivered to DMV. The bill sets the following rules for these termination statements.

1. A secured party must deliver a termination statement on a DMV-prescribed form and, on the debtor's request, to the debtor within (a) 20 days after receiving a signed demand for a termination statement from an owner, when there is no

obligation secured by the vessel and no commitment to make advances, incur obligations, or give value secured by the vessel or (b) if the vessel is a consumer good, 30 days after there is no obligation secured by the vessel and no commitment to make advances, incur obligations, or give value secured by the vessel.

2. When a termination statement is required and the secured party has a DMV-issued written certificate of title, the secured party must deliver the certificate to the debtor or DMV with the statement. If the certificate is lost, stolen, mutilated, destroyed, unavailable, or illegible, the bill requires the secured party to deliver with the statement an application for a replacement certificate.
3. If the security interest was indicated on the certificate of title, DMV must create a new certificate and deliver it or a record evidencing an electronic certificate. DMV must maintain in its files the date and time the statement was delivered.
4. A secured party who does not comply with these requirements is liable for (a) any loss that the secured party had reason to know might result from failure to comply and that could not reasonably have been prevented and (b) the cost of an application for a certificate of title.

The bill allows the DMV commissioner to require a secured party to submit a termination statement electronically.

**§ 38 — Security Interests Created Before the Bill's Effective Date**

A security interest enforceable before January 1, 2015 (the date this provision of the bill takes effect) that has priority over the rights of someone who becomes a lien creditor at that time is a perfected security interest under the bill. Under the bill, a "lien creditor" is a creditor with a lien on the vessel by attachment, levy, or similar means; an assignee for benefit of creditors from the time of assignment; a trustee in bankruptcy from the date of the filing of the petition; or a receiver in equity from the time of appointment.

A security interest in a vessel that is required to have a certificate of title under the bill that is perfected before January 1, 2015 remains perfected until (1) the time perfection would end under the law that the perfection was created or (2) January 1, 2018, whichever is earlier.

The bill does not affect the priority of a security interest that was enforceable and perfected and had its priority established before January 1, 2015.

**§ 34 — Rights of Secured Parties**

The bill provides that perfection, nonperfection, and priority of a security interest with respect to a purchaser's or creditor's rights, including a lien creditor, are governed by the Uniform Commercial Code with the following exception.

If a security interest in a vessel is perfected under the bill's provisions and DMV creates a certificate of title that does not indicate that the vessel is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate:

1. a buyer of the vessel, other than a person in the business of selling or leasing vessels of that kind, takes free of the security interest if the buyer, acting in good faith and without knowledge of the security interest, gives value and receives possession of the vessel and
2. the security interest is subordinate to a conflicting security interest in the vessel perfected under the bill's provisions after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

**§§ 27 and 29-31 — Transfers**

**Voluntary Transfer of Ownership Interest (§ 27).** The bill sets the following rules for voluntarily transferring an ownership interest in a vessel covered by a certificate of title.

1. If the certificate of title is written and notes the transferor's

interest, the transferor must sign it and deliver it to the transferee. If the transferor does not possess the certificate, the person who does must help the transferor comply with this requirement. A secured party does not have a duty to do so if the security agreement prohibits the proposed transfer.

2. If the certificate of title is electronic, the transferor must sign and deliver to the transferee a record showing the transfer of ownership.
3. The transferee can require the transferor to perform these duties to meet these requirements.

Creating a certificate of title that identifies the transferee as the owner of record satisfies the bill's requirements.

Failing to comply with these provisions or apply for a new certificate does not make the transfer ineffective. But, except as otherwise provided by the bill, a transfer that does not comply with these provisions is not effective against another person claiming an interest in the vessel.

The bill provides that a transferor who complies with these provisions is not liable as an owner for events occurring after the transfer, regardless of whether the transferee applies for a new certificate of title.

**Secured Party's Transfer Statement (§ 29).** The bill allows a secured party to file a "secured party's transfer statement" with DMV when the secured party has a right to transfer ownership in the vessel due to default on an obligation.

Under the bill, the secured party must sign the statement which indicates:

1. there has been a default on an obligation to the secured party of record secured by the vessel;
2. the secured party of record is exercising or has exercised post-

default remedies with respect to the vessel and, as a result, the secured party of record has the right to transfer an owner's interest (and must state the owner's name);

3. the name and last-known mailing address of the owner of record and the secured party of record;
4. the transferee's name;
5. other information that the bill requires in an application for a certificate; and
6. either the (a) certificate of title is electronic or (b) the secured party is delivering the written certificate of title to DMV with the transfer statement or does not possess the written certificate created in the owner of record's name.

After delivery of the statement, fees, and taxes to DMV (other than fees connected with the statement or the acquisition or use of the vessel), the bill requires DMV to:

1. accept the statement;
2. amend its files to reflect the transfer; and
3. if the name of the owner whose ownership interest is being transferred is indicated on the certificate of title, (a) cancel the certificate even if the certificate has not been delivered to DMV, (b) create a new certificate with the transferee as owner, and (c) deliver the new certificate or a record evidencing an electronic certificate.

The bill allows DMV to reject a secured party's transfer statement if (1) the application does not comply with the bill's or existing law's requirements, (2) the application lacks information to determine the applicant is entitled to a certificate, or (3) there is a reasonable basis to conclude that the application is fraudulent or issuance would facilitate fraud or illegal acts.

An application or creation of a certificate of title under these provisions does not dispose of the vessel or relieve the secured party of its duties under the law on secured transactions.

***Transfer by Operation of Law (§ 30).*** The bill allows a transferee to sign a “transfer-by-law statement” stating that he or she has acquired or has the right to acquire an ownership interest in a vessel pursuant to law or judicial order (1) because of death, divorce, or other family law proceeding, merger, consolidation, dissolution, or bankruptcy; (2) through exercising the rights of a lien creditor or a person having a lien created by statute or rule of law; or (3) through some other legal process.

Under the bill, a transfer-by-law statement must contain:

1. the name and last known mailing address of the owner of record and transferee and other information required in an application for a certificate;
2. documentation sufficient to establish the transferee’s ownership interest or right to acquire the ownership interest;
3. a statement that the (a) certificate of title is electronic or (b) transferee is delivering the written certificate to DMV with the statement or does not possess the written certificate created in the name of the owner of record; and
4. except for transfers because of death, divorce, or other family law proceeding, merger, consolidation, dissolution, or bankruptcy, evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all people indicated in the department’s files as having an interest, including a security interest, in the vessel.

The bill requires DMV to accept the statement after delivery and payment of fees and taxes, except for those under the bill. DMV must:

1. amend its files to reflect the transfer and

2. if the name of the owner whose interest is being transferred is indicated on the certificate of title, (a) cancel the certificate even if the certificate has not been delivered to the department; (b) create a new certificate indicating the transferee as owner; (c) indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and (d) deliver the new certificate or a record evidencing an electronic certificate.

The bill allows DMV to reject a transfer-by-law statement for the same reasons it may reject a secured party's transfer statement or if the statement does not include satisfactory documentation as to the transferee's ownership interest or right to acquire the ownership interest.

The bill specifies that these provisions do not apply to a transfer of an interest in a vessel by a secured party on default.

***Application for Transfer of Ownership or Termination of Security Interest Without Certificate (§ 31).*** If DMV receives an application for a new certificate due to transfer of ownership or a termination statement from a secured party, without a signed certificate, the bill allows DMV to create a new certificate if the:

1. bill's requirements for creating a certificate are met;
2. applicant provides an affidavit showing he or she is entitled to a transfer of ownership or termination statement;
3. (a) applicant provides satisfactory evidence in a DMV-prescribed form that notification of the application has been sent to the owner of record and all people indicated in DMV's files as having an interest in the vessel, (b) at least 45 days have passed since notice was sent, and (c) DMV has not received an objection; and
4. applicant submits any other information DMV requires as evidence of ownership or the right to terminate a security

interest and there is no credible information of theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel.

The bill requires DMV to indicate on a new certificate that it was created without having a signed certificate or termination statement. If DMV does not receive credible information of theft, fraud, or an undisclosed or unsatisfied claim within one year after creation of the certificate, it must remove the indication from the certificate on request.

Before creating a certificate for a vessel with a value of at least \$5,000, the bill allows DMV to require the applicant to post a bond or provide an indemnity or security equal to twice the vessel's value. The bond, indemnity, or security must be in a form required by DMV and provide for indemnification of any owner, purchaser, or claimant for any expense, loss, delay, or damage. This includes reasonable attorney's fees and costs but not incidental or consequential damages resulting from creation or amendment of the certificate.

If DMV does not receive a claim within one year of creating a certificate, the bill requires it to release any bond, indemnity, or security on request in a form and manner it requires.

**§§ 14-15, 24, and 36-38 — Application**

The bill provides the following rules for application of its provisions.

1. The bill's provisions apply to any transaction, certificate of title, or record relating to a vessel, even if the transaction was entered into or the document created before January 1, 2015.
2. The rights, duties, and interests from a transaction, certificate of title, or record relating to a vessel that was validly entered into or created before January 1, 2015 that would have been subject to the bill's provisions, remain valid.
3. The bill does not affect an action or proceeding begun before

January 1, 2015.

4. Unless the bill's provisions provide otherwise, the principals of law and equity supplement them.

The bill specifies that:

1. possession of a certificate of title does not in and of itself provide a right to obtain possession of a vessel;
2. garnishment, attachment, levy, replevin, or other judicial process against the certificate is not effective to determine possessory rights to the vessel;
3. it does not prohibit enforcement under other law of a security interest in, levy on, or foreclosure of a statutory or common law lien on a vessel; and
4. absence of an indication of a statutory or common law lien on a certificate does not invalidate the lien.

In applying and construing the bill's provisions, the bill requires consideration of the need to promote uniformity with respect to its subject matter among states that have enacted the uniform provisions.

The bill contains the same provision for UCOTVA as it does for UELMA regarding superseding the federal E-SIGN Act (see § 11 above and BACKGROUND).

**§ 28 — *Inaccurate or Incomplete Information***

A certificate of title or other record required or authorized by the bill is effective even if it contains incorrect information or does not contain required information, subject to the law regarding priority of security interests in goods covered by a certificate of title.

**§ 33 — *Buyers in the Ordinary Course of Business***

Except as otherwise provided in the bill, the bill specifies that the rights of a vessel's purchaser, who is not a buyer in the ordinary course of business or a lien creditor, are governed by the Uniform

Commercial Code. A buyer in the ordinary course of business has certain protections in the Uniform Commercial Code even if (1) an existing certificate of title was not signed and delivered to the buyer or (2) a new certificate listing the buyer as owner of record was not created. The protections concern (1) goods entrusted to a merchant with power to transfer rights to a buyer in the ordinary course and (2) buyers in the ordinary course generally taking free of a security interest created by the seller even if the security interest is perfected and the buyer knows about it.

**§ 43 — Penalties for Fraud**

The bill punishes, with one to five years in prison, a fine of \$500 to \$1,000, or both, anyone who, with fraudulent intent:

1. alters, forges, or counterfeits a certificate of title;
2. alters or forges an assignment of a certificate of title or an assignment or release of a security interest or a termination statement, on a certificate of title or DMV form;
3. possesses or uses a certificate of title knowing it is altered, forged, or counterfeited; or
4. uses a false or fictitious name or address, makes a material false statement, fails to disclose a security interest, or conceals any other material fact in an application for a certificate of title.

The bill punishes, with up to two years in prison, a fine of up to \$1,000, or both, anyone who:

1. with fraudulent intent, permits someone who is not entitled to do so to use or possess a certificate of title;
2. willfully fails to mail or deliver a certificate of title or application to DMV within 10 days after the time required by the bill;
3. willfully fails to deliver to a transferee a certificate of title within 10 days after the time required by the bill; or

4. willfully violates any of the bill's provisions where the bill does not provide a criminal penalty.

## **BACKGROUND**

### ***E-SIGN***

The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) (15 U.S.C. § 7001 et seq.) validates the use of electronic records and signatures. Connecticut has also enacted the Connecticut Uniform Electronic Transactions Act (CUETA) (CGS §§ 1-266 to -286), which also validates the use of such records and signatures. The two overlap significantly, although they are not identical. For example, E-SIGN applies only to interstate transactions, not intrastate transactions. CUETA provides that it supersedes, modifies, and limits the federal law except for E-SIGN's consumer disclosure provisions (CGS §§ 1-286).

The federal E-SIGN law specifies that the following notices are not subject to it:

1. court orders or notices, or official court documents required to be executed in connection with court proceedings;
2. utility cancellation or termination notices;
3. notices of eviction, foreclosure, repossession, acceleration, default, or the right to cure, under a rental agreement or a credit agreement secured by someone's primary residence;
4. notices that life insurance benefits, health insurance, or health insurance benefits are being cancelled or terminated, other than with respect to annuities;
5. notices of the recall or material failure of products that could endanger health or safety; and
6. documents required for transporting or handling hazardous material, pesticides, or other toxic or dangerous material (15 U.S.C. § 7003(b)).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/02/2012)