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Representing: CT Law Revision Commission Advisory Committee and Connecticut Bar Association

STATE OF CONNECTICUT

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REPORT OF ADVISORY COMMITTEE ON ADOPTION OF UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

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A. Overview and Recommendation:

The Connecticut Law Revision Commission (the "Commission") at a meeting on December 13, 2011 undertook a review of the Uniform Certificate of Title for Vessels Act ("UCOTVA") that was drafted and approved and recommended for enactment by the National Conference of Commissioners of Uniform State Laws ("NCCUSL") in July of 2011.

The Commission review was conducted by a Commission Advisory Committee (the "Advisory Committee") co-chaired by Commission members Neal Ossen and Thomas J. Welsh. The Advisory Committee included a group of advisors selected on the basis of their expertise in commercial law and transactions, marine law and marine transactions and consumer matters, as well as representation by the affected state departments, the Department of Motor Vehicles ("DMV"), Department of Energy and Environmental Protection ("DEEP") and the Office of the Secretary of the State, as well as a liaison representative of the United States Coast Guard, the President of the Connecticut Marine Trades Association and a member of the Connecticut Bankers Association. Ms. Jenna Padula from the Legislative Commissioners' Office provided staffing for the Advisory Committee and attended the meetings. Representatives from the Office of Legislative Research also attended these meetings and received the written materials that were distributed. A list of the advisors and staff members who attended the Advisory Committee meetings is attached.

The Advisory Committee met on January 5, 2012, January 12, 2012, January 19, 2012, January 26, 2012, February 2, 2012 and by telephone conference on February 21, 2012 and reviewed the text of UCTOVA, as well as pertinent Connecticut statutes, federal regulations, the law of the surrounding states and common law and practice associated with these provisions, and the potential impact on Connecticut consumers, dealers, manufacturers and financiers. The

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Advisory Committee adopted revisions to the model UCTOVA text to incorporate revisions requested by the affected state departments, the Connecticut Marine Trades Association and financiers to conform to Connecticut practice and federal requirements and to reduce adverse impacts upon Connecticut boat owners, dealers, financiers and other affected parties.

Connecticut is one of sixteen (16) states in the United States of America with no certificate of title requirement for water vessels. All states, however, are required to adopt requirements for registering vessels operating in their waters, which requirements have been adopted in Connecticut in Part III of Chapter 268 of the Connecticut General Statutes. The states immediately surrounding Connecticut and Long Island Sound, New York, Massachusetts and Rhode Island, all have certificate of title requirements for vessels within their waters, albeit with differing requirements as to which types of vessels are subject to these laws[1]. As a result of Connecticut's failure to adopt a certificate of title law for vessels, no certificate of prima facie ownership of a vessel exists for owners in Connecticut and perfection of a security interest in a vessel generally must be accomplished by filing a financing statement in the Office of the Secretary of the State under Revised Article 9 of the Uniform Commercial Code[2]. The adoption of a certificate of title requirement in Connecticut will both make its laws and practice generally conform to that in the majority of the other states in the United States and to similar requirements for ownership and financing of motor vehicles in the State of Connecticut and nationwide.

The Advisory Committee generally recommends the adoption of a certificate of title requirement for vessels: (a) to provide certification of prima facie ownership of a vessel to owners and secured parties; (b) to conform the process for obtaining and perfecting a security interest in a Connecticut vessel to that for motor vehicles and for vessels in the majority of states of the United States; (c) to promote the purchase and sale of vessels in Connecticut and to remove a perceived disincentive for additional parties to provide sources of financing for Connecticut vessels; and (d) to provide a state titling law that the Coast Guard could potentially approve to allow a security interest perfected under that law to attain the status of a preferred ship mortgage under federal law – also promoting additional sources of financing.

In the course of its work the Advisory Committee prepared the attached draft act adapted for enactment in Connecticut. The draft includes amendments to make the uniform text conform to Connecticut law and practice and to incorporate concerns raised by the affected state departments, trade representatives and other members of the Advisory Committee.

A detailed discussion of the major issues and revisions of the Advisory Committee's proposed act from the model UCOTVA text is set forth later in this report. A brief summary of the most significant elements follows:

- Only vessels that have Connecticut as their state of principal use and that meet the existing requirements of Connecticut law for registration and numbering in the State of

[1] See New York Consolidated Laws Title 10, Article 46 §2012 (Exclusions); Massachusetts General Laws §90B:36 (Titled Motorboats; Certificates of Title); and Rhode Island Statutes §46-22.1-3 (Owner's Certificate of Title).
[2] Adopted in Connecticut as Article 9 of Title 42a of the Connecticut General Statutes (CGS §§42a-9-101 *et seq.*).

Connecticut will be subject to the new Connecticut certificate of title requirements – these vessels will generally be those that are not federally documented and that either are powered by an engine or that are not powered and are 19½ feet or greater in length.

- The effective date of the proposed act will be January 1, 2015 to permit the public to become aware of these changes and to allow affected state departments time to publicize these changes and to prepare for implementation.
- The provisions of the proposed act will be phased-in by requiring certificates of title under the act only for vessels with model year 2015 and later and vessels that were formerly federally documented or are coming to Connecticut from other states with a certificate of title requirement.
- The proposed act requires that owners and insurers place a permanent "title brand" on the certificate of title for a vessel when they are aware that an event or condition has occurred that renders the vessel "hull damaged"[3] and a $1,000 fine is established for failure to comply.
- The Advisory Committee did not achieve a consensus as to whether the "hull damaged" title brand requirement was workable or should be removed from the Connecticut proposed act, so the provision remained in the proposed act for determination by the General Assembly– however an optional amendment has been included to allow the General Assembly to remove these requirements if it elects to do so while preserving such title brands from other states or as mandated by the Department of Motor Vehicles by regulation.
- Vessel certificates of title will be prima facie evidence of ownership of a vessel and perfection of security interests in vessels will be accomplished by an application to place a notation of the lien on the certificate of title – similar to the provisions for ownership and financing of motor vehicles.

Consumer representatives consulted by the Advisory Committee on the proposed act expressed the opinion that these changes did not adversely affect consumer issues and did not alter policy decisions or compromises made when Revised Article 9 was adopted in 2001.

Because of the interest in uniformity in the area of certificates of title for vessels, in general, and in avoiding fraud and promoting trade and finance of vessels in Connecticut, the Advisory Committee recommends enactment of the Uniform Certificate of Title for Vessels Act with the revisions as set forth in the attached enactment draft.

[3] "Hull damaged" is a defined term in UCOTVA, generally requiring compromise to the integrity of the vessel's hull.

B. Overview of Vessel Certificate of Title Laws and Goals of the Review Process:

1. Overview of Uniform Certificate of Title for Vessels Act[4]:

Record ownership of vessels in the United States is governed by a composite of state and federal law. Some large commercial vessels – those that measure at least five net tons, owned by a U.S. entity, and used in coastwise trade or fisheries – must be documented with the United States Coast Guard National Vessel Documentation Center[5]. Some other vessels – those that measure at least five net tons, owned by a U.S. entity, and used solely for recreational purposes – may but need not be documented with the U.S. Coast Guard.

Documentation of a vessel with the Coast Guard is a way of identifying the owners of the vessel and is often required by marine lenders as a condition to financing. Only a federally documented vessel can be subject to a "preferred mortgage."[6] A preferred mortgage is a perfected lien[7] that has priority over certain (non-preferred) maritime liens and all non-maritime liens in an *in rem* admiralty foreclosure.[8] Federal law prohibits states from issuing a certificate of title for a federally documented vessel and requires that any certificate of title previously issued for a federally documented vessel be surrendered.[9]

Fewer than one percent of vessels in the United States are federally documented; most of the remainder are pleasure boats operated as undocumented vessels. Federal law requires that most undocumented vessels equipped with propulsion machinery be issued a number by the state in which the vessel is principally operated.[10] The numbering regulations are designed to help improve boating safety and to deter, discover, and impede theft. In order to share in certain federal funds, all fifty states and the territories have established boat numbering systems that are approved as complying with the federal requirements.[11] Connecticut adopted its number requirement in Part III of Chapter 268 of the Connecticut General Statutes (Conn. Gen. Stat. §15-141 *et. seq.*)

Although all the states now comply with the federal regulations on the numbering of vessels, there is far less uniformity with respect to state certificate of title laws for undocumented vessels. Thirty-three states and the District of Columbia require certain undocumented vessels to be covered by a certificate of title. Sixteen states, including the State of Connecticut, have no certificate of title law for vessels. And one state, Mississippi, gives the owners of undocumented vessels the option of getting a certificate of title. Even among the states that require a certificate of title for undocumented vessels, the variation in the scope of those laws is substantial. The

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[4] Adapted from NCCUSL Prefatory Note to UCOTVA.
[5] *See* 46 U.S.C. §§ 12102, 12103
[6] 46 U.S.C. §§ 31301(6), 31321, 31322
[7] *See* 46 U.S.C. § 31321(a)(1)
[8] *See* 46 U.S.C. §§ 31301(5), 31325, 31326
[9] 46 U.S.C. § 12106
[10] 46 U.S.C. § 12301
[11] *See* 33 C.F.R. Part 3

laws vary with respect to the size and type of vessels covered, the location or use of the vessel subject to the law, and many other details. Moreover, many of the state titling laws do not clearly delineate how compliance or failure to comply affects the rights of the owner and others claiming an interest in the vessel. As a result, the principal objectives of a titling law – (i) to deter and impede theft; and (ii) to facilitate ownership transfers and financing – are undermined.

Congress enacted the Vessel Identification System (VIS) in 1988 to create a central database of information, maintained by the Coast Guard, about vessels and their owners. The database is designed to be used by the public for law enforcement and other purposes relating to the ownership of vessels.[12] States are not required to make their boat numbering and titling information available to VIS, but they are encouraged to do so. This encouragement comes in a grant of preferred mortgage status to a security interest in a vessel perfected under a state titling law that satisfies applicable federal requirements and is approved by the Coast Guard.[13] Currently, 31 states and territories are participating in the information exchange aspects of VIS[14]. However, no state's certificate of title law for undocumented vessels has received the requisite Coast Guard approval. One of the purposes of UCOTVA is to provide states with a model that the Coast Guard will approve.

It is worth noting that one of the purposes of VIS is to facilitate commerce in recreational vessels by permitting public access to basic information about vessels numbered and titled under state law, as well as about federally documented vessels. However, while transactional information about federally documented vessels was and remains publicly available, transactional information about state-titled vessels in the VIS database is generally not available to the public. As a result, VIS has not resolved difficulties occasionally experienced by vessel buyers and lenders in transactions involving vessels that have moved into or out of federal documentation or from one state to another. UCOTVA seeks to remedy this problem by providing uniform rules on what information states will make available to those seeking to determine the ownership of a vessel.

Connecticut does not participate in the VIS system, largely due to questions relating to restrictions on the ability of the Department of Motor Vehicles to share personal information in its records, as well as concerns about the Coast Guard's requirement that participating states collect Social Security and taxpayer identification numbers of vessel owners. The Advisory Committee draft act attached to this report amends the definition of "motor vehicle record" in Conn. Gen. Stat. §14-10(a)(2) to make clear that disclosure of vessel ownership information is not restricted, so to allow parties to conduct searches and which will not prohibit the State of Connecticut from participating in VIS in the future if it elects[15] to do so.

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[12] 46 U.S.C. § 12501

[13] 46 U.S.C. § 31322(d)(1)

[14] Connecticut does not currently participate in the VIS program.

[15] Connecticut will also have to obtain a waiver from the United States Coast Guard from having to provide certain information, such as social security numbers and taxpayer identification numbers of vessel owners, and other information which the Connecticut proposed act does not require the state to collect. Discussions between the affected state departments and the United States Coast Guard representative occurred during the Advisory

2. Purposes of the UCOTVA

UCOTVA is modeled somewhat on the Uniform Certificate of Title Act, but draws heavily from other sources as well. Chief among these other sources are: (i) Coast Guard regulations relating to the approval of state certificate of title laws for the purposes of the VIS; and (ii) a Model Act for Vessel Titling, proposed by the Vessel Identification Registration and Titling Committee of the National Association of State Boating Law Administrators.

The principal objectives of UCOTVA are to: (i) qualify as a state titling law that the Coast Guard will approve; (ii) facilitate transfers of ownership of a vessel; (iii) deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel; (iv) accommodate existing financing arrangements for vessels; (v) work seamlessly with the Uniform Commercial Code, most notably Articles 2 and 9; (vi) manage, to the extent possible, the complications that can arise from a vessel's transition in or out of federal documentation; (vii) provide clear rules on the consequences of compliance or noncompliance; (viii) impose minimal or no new burdens or costs on state titling offices; and (ix) protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty or sinking has caused significant damage to the vessel's hull integrity.

UCOTVA's branding rules may be its greatest innovation. Few states currently brand the title of vessels, with the result that vessels with hidden hull damage can be resold after cosmetic repairs without disclosure of the damage. This problem can be quite significant after a major hurricane or other widespread casualty. By establishing a model vessel brand, UCOTVA provides a mechanism for consumers, insurers, and lenders to receive valuable information, which in turn can prompt further investigation, help ensure that necessary repairs are made, and aid in boating safety. UCOTVA creates two processes for branding titles, one for owners of record and a supervening process for insurers. To maintain simplicity, however, the two processes each yield the same, single brand: "hull-damaged." UCOTVA encourages compliance with its branding rules by imposing an administrative penalty on owners and insurers who fail to comply.

3. Standards Employed in the Connecticut Review Process:

Co-Chair Welsh recommended that the Advisory Committee adopt the following standards for their review and for recommendations as to any deviations from the model UCOTVA text in Connecticut or recommended changes to any other statutes:

- The policy decisions made in the 2001 adoption of Revised Article 9 in Connecticut and in statutes other than UCOTVA in Connecticut (including, without limitation, in Part XI

Committee meetings however new federal regulations will likely be promulgated relating to the VIS program (in part to reflect the model UCOTVA text) in the future before any additional VIS-related action by DMV and DEEP will become appropriate.

of Chapter XI of the General Statutes on Retail Installment Sales Financing) should be preserved whenever possible, unless the change is necessary to give effect to the adoption of UCOTVA in Connecticut and provided that any parties that were proponents for these policy decisions are advised and given the opportunity to address the proposed change.

- Changes should not be made to the model UCOTVA text unless necessary due to deviation from Connecticut law or practice, to reduce any resulting ambiguity or to preserve the policy decisions or integrate the act into the existing statutory and administrative framework in Connecticut for vessel registrations and operation of the certificates of title function by the affected state departments. Adherence to the uniform text to the greatest degree possible will advance the goal of UCOTVA in Connecticut, as noted in Section 26 of the proposed act, to "promote uniformity of the law with respect to its subject matter among states that enact it", and thereby to permit the NCCUSL official comments and judicial decisions in other states relating to the uniform text to be persuasive authority to be cited to courts in the State of Connecticut.

In general, the Advisory Committee review and discussion employed the above standards and revised the text in the accompanying enactment draft as little as possible from that of the model UCOTVA text.

C. Significant Specific Issues and Alternatives Addressed:

The following were the most significant issues addressed in the review and revision of the UCOTVA. (Additionally there are a number of revisions not discussed below, as the Advisory Committee considers them to be technical, noncontroversial and mostly conforming changes.)

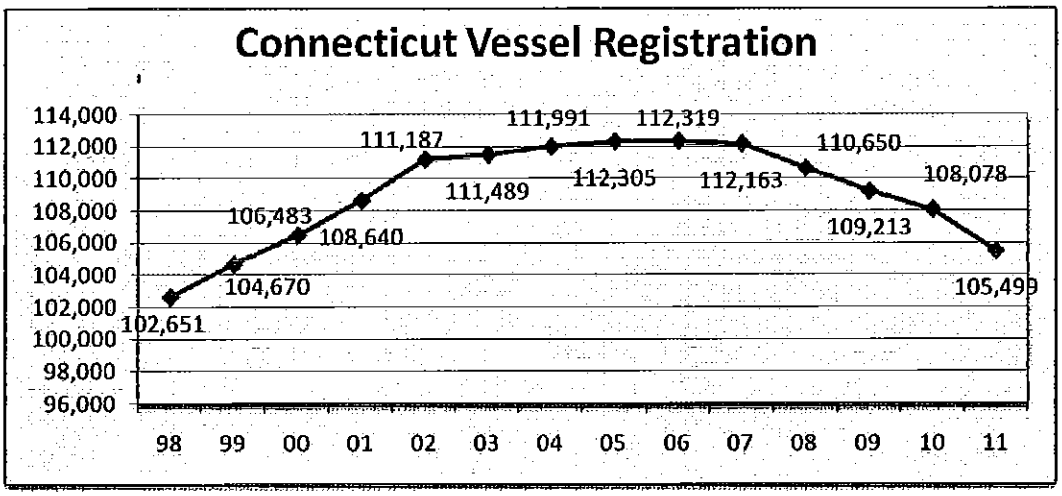
1. Scope of Act – Definition of "Vessel" and Exceptions: The model UCOTVA text prepared by NCCUSL defines a "vessel" for purposes of the act to be any watercraft used or capable of being used as a means of transportation on water with stated exceptions for seaplanes, amphibious vehicles subject to applicable motor vehicle certificate of title laws, lifeboats stationary floating structures, mechanically restricted vessels on a fixed course and governmental vessels. The model UCOTVA definition specifically excludes watercraft less than 16 feet in length or which has an engine of less than 10 horsepower. Since, unlike many states that will be enacting UCOTVA, Connecticut does not have an existing certificate of title regime for vessels, the Advisory Committee determined that the requirements for title certificates for vessels should be the same as the requirement for registering vessels operating in Connecticut waters under Conn. Gen. Stat. §15-145.[16] The Advisory Committee also believes that making the title certificate requirements the same as for registration and numbering of vessels in Connecticut will

[16] In addition, the United States Coast Guard liaison to the Advisory Committee stated, in response to a question from DMV and DEEP staff, that the federally mandated registration requirement should be conformed with the certificate of title requirement to comply with existing and future U.S. Coast Guard regulations for approval of a state's titling law under 46 U.S.C. § 31322(d)(1).

reduce confusion on the part of the public that would ensue if the requirements for registration and title certificate differed.

Existing statutory numbering and registration requirements for vessels in the State of Connecticut provide an exception in Conn. Gen. Stat. §15-143 for vessels that are less than nineteen and one-half (19½) feet in length and that are not a 'motorboat' (defined in Conn. Gen. Stat. §15-151 as any watercraft fitted with propulsion machinery, whether or not it is the principal source of propulsion). The difference between the 16 foot length requirement in the UCOTVA text and the 19 ½ foot length requirement in the Connecticut numbering and registration statute, as well as the engine 10 horsepower 'floor' in the UCOTVA text are the principal differences in these requirements.

An analysis prepared by the Department of Energy and Environmental Protection Boating Division of the Bureau of Outdoor Recreation (the "DEEP Boating Division") reported the numbers of vessel registrations in Connecticut over the past 13 years as set forth in the following chart.



In addition, the DEEP Boating Division further reported, based on 2011 data that the comparison of numbered and registered vessels by vessel size class was as set forth on the following table.

Comparison of Numbered and Registered Vessels by Size Class

Vessel Size	Numbered	Registered	Difference
Not mechan	471	479	8
Under 16'	46,757	46,772	15
16' < 26'	45,522	45,612	90
26' < 40'	8,501	10,865	2,364
40' < 65'	766	1,743	977
Over 65'	15	28	13
Total	102,032	105,499	3,467

Based upon this and extrapolated data from 2011 registration information, DEEP estimated that the state would lose approximately $259,237 in revenue from vessel registrations if the Connecticut registration statutes were changed to match the model UCOTVA text, as set forth in the following table.

Registered vessels <16' with < 10 HP*

Size	Number	Reg. Fee	Potential Revenue Loss
< 12'	11,288	$.7.50	84,660
12' < 13'	5,490	$11.25	61,762
13' < 14'	991	$15.00	14,865
14' < 15'	3,826	$18.75	71,738
15' < 16'	1,165	$22.50	26,212
Total	22,760		$259,237

*extrapolated from incomplete data file from Sept. 2011 (total registered vessels: 105,269)

In addition the DEEP Boating Division estimated that the state would potentially lose approximately $288,410 in federal Recreational Boating Safety funding allocation due to the reduction in the total number of registered vessels in Connecticut. Therefore the loss in revenue to the State of Connecticut resulting from conforming Connecticut's registration requirements to the definition set forth in the model UCOTVA text would total $547,947.

Due to this significant potential revenue loss to the State of Connecticut, and no compelling reason why the Connecticut registration requirements were not suitable, the Advisory Committee recommended that the proposed certificate of title act be made to conform to the existing Connecticut standard for registration and numbering of vessels. The draft text of the act attached to this report incorporates this change from the model UCOTVA text.

As noted below, perfection of a security interest in vessels covered by a certificate of title under the proposed act would be by indicating the lien on the certificate of title, rather than by filing a

financing statement. The Office of the Secretary of the State, however, advised the Advisory Committee that the anticipated revenue decrease from the reduction in the number of financing statements perfecting security interests in vessels would be nominal.

2. Effective Date and Phase-In of Requirements: To permit the public and the affected state departments to prepare for the implementation of the new certificate of title requirements in the proposed act, the Advisory Committee recommends that this act have an effective date of January 1, 2015.

In addition, since Connecticut has no current certificate of title requirement and over 105,000 vessels are currently registered in the State of Connecticut, the Advisory Committee determined that there would be a substantial administrative burden to require certificates of title for all existing registered vessels that have Connecticut as their state of principal use. In addition to the volume of past applications for title, determination and examination of adequate documentation of the chain of title of all existing vessels would be extremely time-consuming and expensive. Therefore, the Advisory Committee recommends that the new certificate of title requirement be phased in slowly in Connecticut. Section 6 of the attached draft act was modified from the model UCOTVA text to add an additional transition exception that only requires certificates of title for vessels that: (a) have a certificate of title previously issued by another state when Connecticut becomes the state of principal use of the vessel; (b) were previously federally documented vessels that relinquish their federal documentation; or (c) are designated by the manufacturer as model year 2015 or later. This proposed "phase-in" will not require a title inquiry relating to older Connecticut vessels since a title certificate will not be issued unless there is prior documentary evidence of title in the form of a title certificate from another state or federal documentation. This approach is also similar to the approach taken by the State of New York in the adoption of its vessel certificate of title law[17] for vessels.

3. Title Branding for Hull Damaged Vessels – Optional Amendment Provided: The attached draft act generally reflects the provisions adopted by consensus of the Advisory Committee members. One policy issue, however, divided the Advisory Committee members – namely the question as to whether the State of Connecticut should adopt the provisions in UCOTVA mandating that owners and insurers place a permanent "title brand" on the certificate of title for a vessel when they are aware that an event or condition has occurred that renders the vessel "hull damaged". This provision is contained in section 10 of the attached proposed act.

Proponents of the "hull damaged" title branding requirement noted that:

- It is reasonable for consumers to have some assurance that the seller of a vessel does not know that the integrity of the hull of the vessel has been compromised;
- The consequences of sale to a buyer of a vessel with a compromised hull were so potentially serious that the requirement should be adopted; and

[17] See New York Consolidated Laws Title 10, Article 46 §2102(a)(14) excluding vessels designated by the manufacturer as being a 1986 or earlier model year vessel.

- An administrative fine of one thousand dollars ($1,000.00) is the mandated penalty in the proposed act so an owner should not incur additional liability under Connecticut law for negligence or breach of this statutory duty.

Opponents of the "hull damaged" title branding provision noted that:

- This requirement is new with UCOTVA and no other state has adopted this requirement or this definition of "hull damaged";
- The adoption of a title certificate requirement in Connecticut is a large step in itself and should not be accompanied with being the first state in the United States to adopt this requirement;
- The President of the Connecticut Marine Trades Association and a licensed vessel surveyor stated that it might not be possible for a surveyor to identify damage that would trigger this requirement so an owner may not be able to know whether the hull's integrity has been compromised; and
- Owners becoming aware of a collision or similar event during their ownership might be compelled to permanently brand the title of the vessel as "hull damaged", with a resulting substantial diminution in the vessel's value, even though there is no demonstrable evidence that the hull's integrity is compromised – to avoid the fine and potential future litigation for negligence or other legal theories.

The opponents of the "hull damaged" title branding requirement recommended that either: (i) this requirement should be deleted (while preserving any such title brands on certificates of vessels coming into Connecticut from other states in the future) until more experience is obtained on this requirement in other states; or (ii) the definition of "hull damaged" in section 2(a)(14) should be amended to refer to a well defined legal definition, such as the use of the terms "total loss" or "total constructive loss" in the context of branding of motor vehicle titles[18]. The Co-Chairs of the Advisory Committee were reluctant to draft substantial non-uniform revisions to this new provision without a consensus of the Advisory Committee – in part since a definition that is different from that in the model UCOTVA text would not be entitled to the benefit of case law and interpretations that might be adopted in the future relating to the UCOTVA text.

Since the Advisory Committee was unable to achieve a consensus to remove the title branding requirement from the Connecticut act, the original UCOTVA title branding requirement was left in the attached draft act. The Advisory Committee, however, recognized that this is a policy decision that should be made by the General Assembly in the consideration and adoption of the proposed act. To assist the General Assembly in the event the policy decision was made to remove this requirement, the Advisory Committee prepared a draft optional amendment to the

[18] See *e.g.*, Conn. Gen. Stat. §14-16c, relating to required marking on certificates of title upon declaration by insurer of total loss and Regulations of Connecticut State Agencies §14-174-3 requiring the brand "UNREPAIRABLE" and the stamped legend "SALVAGE PARTS ONLY" on the certificate of title when a motor vehicle has been declared a total loss or constructive total loss by an insurance company.

proposed act that removes the title branding requirement, which optional amendment is attached to this Report. Since the removal of the "hull damaged" title branding requirement in the proposed act is fairly complicated, because it must preserve any such brands that are contained on certificates of title for vessels from other states and other legends or brands that might be required by the Department of Motor Vehicles by regulation, the attached Advisory Committee optional amendment was necessary in the event the General Assembly decides to remove this requirement.

4. Perfection of Security Interests In Vessels: Pursuant to Conn. Gen. Stat. §42a-9-311(a)(2), perfection of a security interest in a vessel that is covered by a certificate of title is governed by the certificate of title law -- which requires that the security interest be indicated on the certificate of title. Article 9 of the Uniform Commercial Code ("UCC") also makes clear that compliance with the requirements of the certificate of title law by notation on the certificate is the equivalent of filing a financing statement under Article 9 of the UCC[19]. These provisions are similar to those for perfection of security interests in motor vehicles covered by a certificate of title under Conn. Gen. Stat. §14-185.

Since the State of Connecticut does not currently have a certificate of title requirement for vessels, perfection of a security interest in Connecticut vessels that are not federally documented is generally accomplished, under current Connecticut law, by filing a financing statement in the Office of the Secretary of the State. After the January 1, 2015 effective date of the proposed act perfection of security interests in covered vessels would be accomplished by delivering a properly completed application to the Department of Motor Vehicles with the filing fees for the notation of the security interest on the certificate of title for the vessel.[20] The savings clause in section 28 of the proposed act would preserve the effectiveness of security interests perfected before this effective date until the earlier of January 1, 2018 or any earlier lapse of perfection of the security interest under the current law.

The model UCOTVA text appears to allow permissive issuance of a certificate of title for vessels excluded from the operation of the proposed act under section 6(b). As a consequence, however, of the "phase-in" in Connecticut of the vessel certificate of title requirements recommended by the Advisory Committee above, the Advisory Committee revised section 15(g)(2) of the model UCOTVA text to make clear that vessels for which a certificate is not required may not be perfected by notation on a certificate of title for the vessel, since issuance of a certificate of title for such vessels is not permitted. Therefore under the proposed act security interests in these excluded vessels must be perfected under current law (i.e. filing of a financing statement to the extent required by Article 9 of the UCC).

Conn. Gen. Stat. §14-185, relating to perfection of security interests in motor vehicles covered by a certificate of title, provides that a security interest in such a motor vehicle is perfected as of the day the security interest first attached if the application for notation of the

[19] Codified in Connecticut in Conn. Gen. Stat. §42a-9-311(b).
[20] As noted above, the Office of the Secretary of the State advised the Advisory Committee that the reduction of revenue from loss of such filings is expected to be nominal.

security interest on the certificate of title is delivered to the Department of Motor Vehicles within 20 days thereafter. The NCCUSL legislative guide for the adoption of Revised Article 9 of the UCC recommended that states adopting Revised Article 9 remove these relation-back provisions from their certificate of title laws to avoid confusion, since Article 9 provides its own 20-day relation-back period for purchase money security interests[21]. When the State of Connecticut adopted Revised Article 9 in 2001 it did not eliminate this 20-day relation-back provision in Conn. Gen. Stat. §14-185. The Advisory Committee discussed this provision and, in light of a recent case decided by the United States Court of Appeal for the 10th Circuit[22], decided not to include a non-uniform 20-day relation-back provision in section 15 of the proposed act (unlike Conn. Gen. Stat. §14-185). The Advisory Committee discussed whether the 20-day relation-back provision in Conn. Gen. Stat. §14-185 should also be deleted – however, since this revision was beyond the mandate of the Advisory Committee and since no representatives of any affected interest groups relating motor vehicle financing were present or notified of this change the Advisory Committee declined to make this change in the proposed act. The Advisory Committee suggests, however, that the Department of Motor Vehicles consider proposing an amendment to Conn. Gen. Stat. §14-185 to delete this 20-day relation-back provision.

5. Transfer of Ownership or Termination of Security Interest With and Without Certificate of Title: The proposed act provides statutory provisions to allow the Department of Motor Vehicles to transfer the ownership of a vessel and to issue a new certificate of title, after the applicant delivers the original certificate of title to the DMV: (a) upon enforcement of a security interest by a secured party after a default (section 19); and (b) by operation of law pursuant to law or a judicial order (section 20). These provisions are relatively non-controversial.

Section 21 of the model UCOTVA text and the proposed act, also provides a process for parties to request the Department of Motor Vehicles to change the ownership of a vessel or to terminate a security interest of record when they are not in possession of the original certificate of title. This section of the proposed act provides for safeguards to protect the rights of innocent parties that have an interest that might be affected – by requiring that notice be sent to all parties shown in the DMV's records as having an interest in the vessel with proof provided to the DMV that not less than 45 days have passed with no objection having been received from any of these parties. In addition, the proposed act provides for a notation on the certificate of title that it has been issued pursuant to this process and provides for a 1-year period in which a party may show that the transfer was not proper, after which a party may request the notation be removed from the certificate of title. The act also requires the DMV to require a bond in an amount equal to twice the value of any vessel having a value of $5,000.00 or more during this one year period to provide security for payment of damages to any injured party.

6. DMV Records Requirements: Sections 11 and 25 of the model UCOTVA text and the proposed act impose certain requirements on the Department of Motor Vehicles to

[21] Adopted in Connecticut in Conn. Gen. Stat. §42a-9-324.
[22] See *In re Roser*, 613 F.3d 1240 (10th Cir., 2010).

preserve copies of documents and to maintain and index and permits searches and disclosure of records relating to vessel certificates of title and applications. Section 25 (b) of the proposed act also requires the Department of Motor Vehicles to maintain information regarding security interests in vessels for at least ten (10) years after DMV receives notice that a security agreement has been terminated. The Department of Motor Vehicles advised the Advisory Committee that its new computerized system should be able to accommodate these functions. The Advisory Committee amended the proposed act to eliminate certain mandatory response periods (generally of three (3) days) in the model UCOTVA as unnecessary and provided in section 28(d)(1) of the proposed act that any search of DMV records not fail to reflect information relating to vessel certificates of title that was filed with the DMV more than ten (10) calendar days previously. The Department of Motor Vehicles indicated that these revisions in the proposed act were satisfactory.

7. Commissioner Rules and Regulations and Penalty Provisions: Sections 29 through 34 in the proposed act were added to the model UCOTVA text to integrate the provisions with the operations of the Department of Motor Vehicles.

Section 29 of the proposed act specifies fees for the various functions to be performed by the DMV that are consistent with the fees charged for similar functions for motor vehicle certificates of title. Additional fee provisions were added to provide for new applications created under the proposed act for vessel certificates of title that are not provided for motor vehicles.[23]

Section 30 of the proposed act permits the Commissioner of the Department of Motor Vehicles to conduct investigations, establish rules and to promulgate regulations to implement the vessel certificate of title functions in the proposed act. The Commissioner is specifically authorized to adopt regulations for the placement of additional "indications" on vessel certificates of title concerning the condition of or status of title to any vessel. This provision also requires the DMV to place an indication on a certificate of title stating that the vessel may be subject to security interests not shown on the certificate when this state becomes the state of principal use for a vessel from one of the other states that does not have a certificate of title requirement.[24]

Sections 31 and 32 of the proposed act provide a general right of administrative appeal relating to any adverse decision by the Department of Motor Vehicles under the proposed act and allows further appeal to the Superior Court – similar to the provisions of the motor vehicle certificate of title statutes.[25]

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[23] *i.e.* for filing a termination statement relating to a security interest pursuant to section 16 of the proposed act, for filing a secured party's transfer statement pursuant to section 19 of the proposed act, for filing a transfer-by-law statement pursuant to section 20 of the proposed act and for filing an application for transfer of ownership or termination of a security interest without a certificate of title pursuant to section 21 of the proposed act.

[24] This will give notice to potential purchasers and secured parties that they cannot rely solely on the certificate of title and must do additional research. This indication is permitted to give notice to these parties in compliance with the provisions of UCC Article 9 in Conn. Gen. Stat. §42a-9-337.

[25] i.e. Conn. Gen. Stat. §§14-194 and 14-195

The criminal penalties in section 33 of the proposed act are based upon the penalties for similar wrongful conduct relating to motor vehicle certificates of title set forth in Conn. Gen. Stat. §§14-196 and 14-200.

8. Amendment of DMV Privacy Restrictions: The model UCOTVA text and the proposed act adopt the concept that a potential purchaser or secured party should be able to perform a search of the records of the Department of Motor Vehicles relating to ownership and interests in a vessel. Motor vehicle records maintained by the DMV, however, are required to be confidential pursuant to Conn. Gen. Stat. §14-10. To make it clear that records relating to certificates of title for vessels may be disclosed, section 34 of the proposed act amends the definition of "motor vehicle record" in Conn. Gen. Stat. §14-10(a)(2) to expressly exclude from that definition the records maintained by the DMV relating to vessel certificates of title under the proposed act.

9. Court Consideration of Official Comments to UCOTVA: Uniform acts prepared by NCCUSL are accompanied by official comments that explain the intent and relationship of the text. This text is useful to practitioners and the courts to promote uniformity of the law with respect to its subject matter among states that enact it as set forth in section 26 of the model UCOTVA text and the proposed act. Since the provisions of Conn. Gen. Stat. §1-2z might be construed to prohibit Connecticut courts from considering the NCCUSL official comments to the uniform law when interpreting the proposed act, section 26 of the proposed act was amended to specifically permit courts of this state to consider the official comments to ascertain the meaning and effect of the proposed act.

Based upon the substantial work and analysis by the Advisory Committee and staff and the discussions and comments by the various experts and constituencies included in the review process, the Advisory Committee recommends enactment of the Uniform Certificate of Title for Vessels Act with the modifications as set forth in the attached proposed draft.

CONNECTICUT LAW REVISION COMMISSION

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