Bill Number: HB-6341
Person Testifying: Thomas J. Welsh
Representing: CT Law Revision Commission Advisory Committee and Connecticut Bar Association

STATE OF CONNECTICUT

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Testimony of Thomas J. Welsh

IN SUPPORT OF HOUSE BILL 6341

An Act Adopting The Uniform Certificate Of Title For Vessels Act

Judiciary Committee
February 13, 2013

Sen. Coleman, Rep. Fox and Members of the Judiciary Committee:

It is a pleasure to address you today relating to House Bill 6341 "An Act Adopting The Uniform Certificate Of Title For Vessels Act".

My name is Thomas Welsh. I am an attorney and a principal of the law firm of Brown & Welsh, P.C. in Meriden, Connecticut and am a member of the Connecticut Law Revision Commission. I am also the Chair of the Commercial Finance Committee and member of the Executive Committee of the Commercial Law and Bankruptcy Section of the Connecticut Bar Association and a member of the American Law Institute, a Fellow of the American College of Commercial Finance Attorneys and hold posts in the American Bar Association. I am testifying today in support of this bill both as the co-chair of the Law Revision Commission Advisory Committee on this topic and as the Chair of the Commercial Finance Committee and Executive Committee member of the Commercial Law and Bankruptcy Section of the Connecticut Bar Association.

I thank Rep. O'Neal, as Chairman, and the Law Revision Commission, for appointing Attorney Neal Ossen and me as co-chairs of an Advisory Committee relating to consideration of the adoption of the latest version of the Uniform Certificate of Title for Vessels Act ("**UCTOVA**") in Connecticut that were adopted in 2011 by the National Conference of Commissioners on Uniform State Laws. The Advisory Committee was comprised of a wide-ranging 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. This Advisory Committee, with the help of the Legislative Commissioner's Office, drafted a report and a proposed act, upon which this Bill is based, as a result of the work of this Committee. The Advisory Committee report and proposed Bill was approved by the Law Revision Commission at a meeting on February 24, 2012. A copy of this Law Revision Commission Advisory Committee report has been submitted as part of this testimony for consideration by the Judiciary Committee and goes into substantially more detail with respect to the consideration for adoption of UCOTVA in Connecticut.

This Advisory Committee report and draft bill dated February 22, 2012 was the basis of a bill (SB-418) in the 2012 Session of the General Assembly that passed the Senate but was not able to be considered by the House of Representatives before the end of the short session. From last Fall until early this year I met and worked with staff of DMV and DEEP to prepare text that would be satisfy their technical requirement for implementation. The 2012 bill, with amendments offered in that session and the technical revisions given to me by DMV and DEEP, is the basis of the text of the current bill.

Connecticut is one of sixteen (16) states in the United States of America with no certificate of title requirement for water vessels. Federal law requires all states, however, to adopt requirements for registering vessels operating in their waters, which 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.

As a result of Connecticut not adopting 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. The adoption of a certificate of title requirement in Connecticut will 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 and will remove a perceived disincentive for the industry and for financiers of vessels in Connecticut.

The Advisory Committee met during January and February of 2012 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 Advisory Committee prepared a proposed draft act that 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.

The Advisory Committee recommended the adoption of a certificate of title requirement for vessels:

- to provide certification of prima facie ownership of a vessel to owners and secured parties;
- 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;
- 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
- 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.

A brief summary of the most significant enactment issues in the Advisory Committee report and proposed act follows:

- 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.
- 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.
- Only vessels having Connecticut as their state of principal use and that meet the currently existing requirements of Connecticut law for registration and numbering of vessels will be subject to the new certificate of title requirements. In general, covered vessels will be those that are not federally documented and that are either powered by an engine or that are 19½ feet or greater in length.
- The provisions of the proposed Bill will be phased-in by requiring certificates of title under the act only for vessels with model year 2016 and later and vessels that were formerly federally documented or are coming to Connecticut from other states with a certificate of title requirement – the Advisory Committee report proposed that vessels with model year 2015 and later be covered but the Bill was drafted to provide for these requirements to be in full effect a year later.
- Any security interests in covered vessels that are perfected by filing a financing statement prior to the effective date of the act will remain in effect until the earlier of the lapse of the financing statement or January 1, 2018.
- DMV privacy statutes have been clarified to allow parties to search DMV records for ownership or security interest information on titled vessels.

- The Act permits the issuance of electronic certificates of title by the DMV, similar to the authorization of electronic certificates of title for motor vehicles in Connecticut.

The only controversy that I have heard about relating to this proposed bill relates to the fact that the fees and costs in this draft bill to be paid by the public with respect to titles to water vessels have been set at double the amount for comparable actions for motor vehicles. This was done to recover the costs of implementing this new program by the Department of Motor Vehicles before revenue begins to be generated in 2016 – to result in a cost-neutral bill that will not adversely affect the State budget. The current bill, however, also contains a 'step-down' provision to automatically reduce these fees to be equal to those for motor vehicles on January 1, 2018. There is some dissatisfaction with this fee schedule from the Connecticut Marine Trades Association (who feel that the fees should be the same as those for motor vehicles) and from the Department of Motor Vehicles (since the different fee schedule is more difficult to implement). Of course, this issue is a policy decision to be determined by the General Assembly.

We look forward to your consideration of this Bill and recommend its approval.

The Law Revision Commission and its Advisory Committee would be happy to address any questions or concerns that the Judiciary Committee or any members may have.