

Bill Number: HB-5216
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 5216

An Act Adopting The Uniform Certificate Of Title For Vessels Act

Judiciary Committee
February 24, 2014

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

It is a pleasure to address you today relating to House Bill 5216 "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 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 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. In addition it was the basis for a bill (HB-6341) in the 2013 Session of the General Assembly that was the last bill passed by vote in the House of Representatives but also failed to reach the Senate in time to be considered last year. 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 developing technical requirements for implementation. The 2013 bill, with the technical revisions given to me by DMV and DEEP discussed below, is the basis of the text of the current bill.

Connecticut is one of sixteen (15) states in the United States of America with no certificate of title requirement for water vessels¹. 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

¹ West Virginia adopted UCTOVA in 2013 and the bill has been introduced in the States of Indiana and Mississippi to this date in 2014.

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, 2016 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 2017 and later and vessels that were formerly federally documented or are coming to Connecticut from other states with a certificate of title requirement² – the Advisory Committee report proposed that vessels with model year 2015 and later be covered but this Bill was drafted to provide for these requirements to be in full effect on January 1, 2016 to give DMV, DEEP and the

² This 2014 Bill includes language requested by DMV that allows certificates of title to be issued based on certificates of title issued by other states only if the vessels would otherwise be subject to a certificate of title under Connecticut law – for example, a 19½ foot minimum length or powered vessel with 2017 or later model year, etc.

public sufficient time to become aware of these changes and to phase them in gradually.

- 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, 2019.
- DMV privacy statutes have been modified to exempt vessel title information from motor vehicle privacy restrictions to allow lenders and other 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 relating to the bills considered in the 2012 and 2013 Sessions was due to the fact that the fees and costs in those draft bills to be paid by the public with respect to titles to water vessels were double the amount for comparable actions for motor vehicles – this had been done to recover the costs of implementing this new program by the Department of Motor Vehicles and was to automatically be reduced after two years. The current bill, however, makes the fees charged by DMV for vessel certificates of title the same as equivalent functions under the motor vehicle certificates of title. This change was at the request of the Department of Motor Vehicles for two major reasons:

- Section 6(b)(14) of the Bill was revised from prior versions to make clear that certificates of title for vessels previously titled in other states will only be granted a certificate of title in this state if the vessel would otherwise be eligible for a certificate of title in Connecticut. DMV indicates that this change will significantly reduce the administrative costs to phase-in the program and will comply with the ongoing design of its new computer system for certificates of title.
- Implementation of two different fee schedules and providing for a revision of the fees after two (2) years would be administratively difficult and require additional personnel time and costs.

From my discussion with the Connecticut Marine Trades Association (who served on my Advisory Committee but expressed an objection to the prior bills due to this fee discrepancy between water vessels and motor vehicles) it appears that they support this change and are now very supportive of the bill generally.

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.