



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Relating to

New Jersey Certificate of Title for Vessels Act

July 8, 2013

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.
Please consult the New Jersey statutes in order to determine the law of the State.

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Introduction: The Purpose of the Uniform Certificate of Title for Vessels Act

The Uniform Certificate of Title for Vessels Act (“UCOTVA”) was approved and recommended for enactment by the Uniform Law Commission (“ULC”) in July 2011. It provides a comprehensive system of ownership certification for watercraft. The principal objectives of the Act are “(i) to deter and impede theft; and (ii) to facilitate ownership transfers and financing.” *ULC, Certificate of Title for Vessels Act, Prefatory Note*, page 1. The Act has an additional objective of “protect[ing] 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.”¹ *Id.* at 2. As of the date of this Report, the UCOTVA has been enacted in Virginia and introduced in the Connecticut Legislature.

Eastern seaboard states like Virginia, Connecticut and New Jersey, were recently confronted with many of the issues addressed by UCOTVA, in the wake of Hurricane Sandy, the deadliest storm to hit the region in more than forty years. Eric S. Blake, et al., *Tropical Cyclone Report*, National Hurricane Center, (Feb. 12, 2013), http://www.nhc.noaa.gov/data/tcr/AL182012_Sandy.pdf. Hurricane Sandy ravaged New Jersey’s 127 miles of Atlantic coastline which were in the bull’s eye of the storm, as well as the state’s 1,792 miles of tidal shoreline, and 83 miles of bay. *See id.*; *see also* Marine Conservation Agreement, http://www.mcatoolkit.org/Country_Analyses/United_States/New_Jersey.html (last visited July 7, 2013). With more than 4,000 bays, lakes, and rivers, New Jersey has significant recreational boating industry that was severely affected by the storm. *See* Press Release from D. Scott Croft from Boat Owner’s Association of America (November 14, 2012), available at <http://www.boatus.com/pressroom/release.asp?id=848>. Currently, over 176,641 boats are registered in New Jersey and of the estimated 65,000 boats damaged or lost as a result of Hurricane Sandy, 25,000 were from New Jersey. *Id.*; National Marine Manufacturers Association Release, *Economic Significance of Recreational Boating in N.J.*, http://www.nmma.org/assets/cabinets/Cabinet508/New_Jersey_Boating_Economics%20State.pdf. In light of the impact of Hurricane Sandy, UCOTVA would provide the marine industry a strong infrastructure as it rebuilds and offer needed safeguards to New Jersey consumers. Accordingly, the Commission recommends adoption of UCOTVA in New Jersey.

Background

New Jersey is among the 33 states that already requires a certificate of title for certain vessels. New Jersey Boat Ownership Certificate Act, *N.J.S. 12:7A-1*, et seq (“BOCA”). But according to the ULC, these certificates of title statutes “vary widely in scope” from state to state. *ULC, Certificate of Title for Vessels Act Summary*.² In these jurisdictions, the statutes are inconsistent because some are based on where the vessel is principally used, others on where it is

¹ The Uniform Act, which includes explanations and illustrative examples of the Act’s provisions in the comments following each section, is available on the ULC’s website at <http://www.uniformlaws.org/Act.aspx?title=Certificate%20of%20Title%20for%20Vessels%20Act>. Documents relating to the Act’s drafting history can be found at the same location.

² Background information on the current state of vessel ownership certification law in the United States is available in the ULC’s *Certificate of Title for Vessels Act Summary* and in its *Report of the Study Committee on Certificate of Title Act for Boats*.

principally moored, and still others are based on where the owner resides. *See id.* In addition, the varying statutes “do not all cover the same types of vessels, each making its own distinctions based on size and propulsion.” *Id.* As a result, there are significant gaps in the coverage provided by the existing statutes and, in other cases, duplication of coverage presents a problem. *Id.* Gaps in coverage allow for fraud with regard to titling, since titles for stolen vessels can be “washed” by simply moving the vessel to a new jurisdiction without a titling law or with a law that does not cover the vessel in question. *Id.* Staff is advised that the patchwork of existing laws makes oversight and enforcement unnecessarily difficult for the U.S. Coast Guard, and that from a day-to-day operational standpoint, the Coast Guard favors uniformity among state laws as a general rule.

In addition to the foregoing, there are other known problems with the titling laws pertaining to vessels. *ULC, Certificate of Title for Vessels Act Summary.* “First, none was written after the revision of Article 9 of the Uniform Commercial Code [(“UCC”)], which all states have since enacted, and few of the laws seem to have been written with much attention to the UCC at all.” *Id.* As a result, it can be difficult to harmonize a state’s titling law with its laws governing the sale of vessels and security interests in vessels. *Id.* This causes problems in the interpretation of the various applicable statutes. *Id.* UCOTVA is designed to integrate seamlessly with the Uniform Commercial Code, particularly Articles 2 and 9 and provide clear rules on all matters relating to a security interest in a vessel. *Id.*

“Second, none of the existing laws has been approved by the U.S. Coast Guard. If such approval were given, security interests perfected under that law would be accorded the status of a preferred ship mortgage under federal law.” *Id.* As a result, adoption of the Act could facilitate vessel financing. “Third, very few state title laws for vessels provide for the branding of the title of a damaged or salvaged vessel.” *Id.* The lack of an established procedure for the marking of the title of a vessel that has sustained structural damage (even if repaired) can mean that a buyer may “unwittingly purchase a vessel that has hidden structural damage and is therefore unseaworthy and unsafe. *Id.* This is a particular problem after a hurricane [, like Sandy,] or other natural disaster in which many recreational boats are damaged. *Id.* Owners and insurers often sell the damaged boats for salvage to buyers who make cosmetic repairs and then resell the boats without disclosure of the casualty.” *Id.*

Record ownership of vessels in the United States is governed by a composite of state and federal law. Certain large commercial vessels—those that measure at least five net tons, are owned by a U.S. entity, and are used in coastwise trade or fisheries—must be documented with the United States Coast Guard National Vessel Documentation Center. *See 46 U.S.C. §§ 12102, 12103; ULC, Certificate of Title for Vessels Act, Prefatory Note, page 1.* Some other vessels—those that measure at least five net tons, are owned by a U.S. entity, and are used solely for recreational purposes—may but need not be documented with the U.S. Coast Guard. *Id.*

Documentation of a vessel with the Coast Guard is one way of identifying the owners of a vessel and is frequently required as a condition of financing. Only a documented vessel can be subject to a “preferred mortgage.” *Id.* (quoting 46 U.S.C. § 31301(6)); *see also 46 U.S.C. §§31321, 31322.* A preferred mortgage is a perfected lien with priority over non-preferred maritime liens and all non-maritime liens in an *in rem* admiralty foreclosure. *Id.*; *see 46 U.S.C. §§*

31301(5), 31325, 31326. Federal law prohibits states from issuing a certificate of title for a documented vessel and requires that any certificate of title previously issued for a documented vessel be surrendered. *Id.*; see 46 U.S.C. § 12106.

Less than one percent of vessels in the United States are documented. *Id.* *ULC, Certificate of Title for Vessels Act, Prefatory Note, page 1.* Most of the undocumented vessels are pleasure boats. Most undocumented vessels that are equipped with propulsion machinery are required by federal law to be issued an identifying number by the state in which the vessel is principally operated. *Id.*; see 46 U.S.C. § 12301. In order to share in certain federal funds, all fifty states and the U.S. territories have established approved boat numbering systems that comply with the federal requirements. *Id.*; see 33 C.F.R. Part 3. The numbering requirements are designed to help improve boating safety and to impede, deter, and discover vessel theft.

One of the major objectives of the ULC's Uniform Certificate of Title Act for Vessels is to qualify it as a state titling law that the Coast Guard will approve. Aside from general widespread compliance with the issuance of an identifying number, the treatment and documentation of vessels varies considerably from jurisdiction to jurisdiction. A Vessel Identification System (VIS) was enacted at the federal level in 1988 to create a central database of information pertaining to vessels and their owners to be maintained by the Coast Guard. *Id.* The database is designed to be used by the public for law enforcement and other purposes relating to the ownership of vessels. 46 U.S.C. § 12501. States are not required to make their boat numbering and titling information available to VIS. *Id.* They are, however, encouraged to do so by the fact that a security interest in a vessel perfected under a state titling law that satisfies applicable federal requirements and is approved by the Coast Guard is granted preferred mortgage status. 46 U.S.C. § 31322(d)(1). *Id.* Currently, 31 jurisdictions participate in the information exchange aspects of VIS. *ULC, Certificate of Title for Vessels Act, Prefatory Note, page 2.*

Summary of Act

The Uniform Act, which consists of 30 statutory sections, covers all vessels of at least 16 feet in length and all vessels propelled by an engine of at least 10 horsepower. *ULC, Certificate of Title for Vessels Act Summary.* It contains exceptions for: seaplanes; amphibious vehicles for which titling is covered by a motor vehicle titling act; watercraft that operate only on a permanently fixed, manufactured course; certain houseboats; lifeboats used on another vessel; and watercraft owned by the United States, a state, or a foreign government. *Id.*

UCOTVA applies if a vessel is used principally on the waters of the state. *Id.* An owner within that state must, within 20 days of becoming an owner or within 20 days of when the vessel becomes used principally on the waters of the state, apply for a certificate of title. *Id.* No application is required for a federally documented vessel, a foreign documented vessel, a barge, a vessel under construction, or a vessel owned by a dealer. *Id.*

UCOTVA provides that an application must include information about the owner or owners, the vessel, and any secured parties and must be accompanied by documentary evidence showing the applicant to be an owner of the vessel. *Id.* Most of the information in the application

will be included on the certificate of title (not including the owner's social security number or taxpayer identification number). *Id.* UCOTVA requires the titling Commission to maintain its records so that searches about vessels can be conducted by the vessel's hull identification number, by the vessel number, or by the owner's name. *Id.*

A significant feature of UCOTVA is its branding requirement. *Id.* If the integrity of a vessel's hull has been compromised by a casualty event, the owner or insurer must, prior to selling the vessel, either note the fact on the certificate of title or apply for a new certificate that indicates that the vessel is "hull damaged." *Id.* Civil or administrative penalties may be imposed for failure to comply with this requirement. *Id.* Adoption of the Act could aid consumers and facilitate boating safety by requiring that the title of a vessel be branded if the integrity of the vessel's hull has been compromised. *ULC, Certificate of Title for Vessels Act, Why States Should Adopt.* The Act's branding rules may be its greatest innovation. *ULC, Certificate of Title for Vessels Act, Prefatory Note*, page 2. Few states currently brand the title of vessels, so vessels with hidden hull damage can be resold after cosmetic repairs without disclosure of the damage. *Id.* This problem can be significant after a major hurricane or other widespread casualty. *Id.* By establishing a model vessel brand, this Act 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. *Id.* The Act creates two processes for branding titles, one for owners of record and a supervening process for insurers. *Id.* To maintain simplicity, however, the two processes each yield the same, single brand: "hull-damaged." *Id.*

Pursuant to the Uniform Act, a certificate is prima facie, but not conclusive, evidence of the facts appearing on it. *ULC, Certificate of Title for Vessels Act Summary.* UCOTVA provides that a transferor who complies with the Act's rules regarding the transfer of title is not liable as owner of the vessel for an event occurring after the transfer, regardless of whether the transferee applies for a new certificate of title. *Id.* The goal of these provisions is to prevent courts from ignoring real transactions and treating the certificate itself as the only document relevant to actual ownership. *Id.*

In addition to the foregoing, UCOTVA includes numerous provisions regarding security interests in vessels, including the following: choice of law; when and how to perfect through notation on the title certificate; when and how a security interest may be perfected in another manner; how to terminate perfection; the effect of minor errors in the application or in the certificate; and the priority of security interests in a vessel. *Id.* All of these provisions are consistent with Article 9 of the Uniform Commercial Code. *Id.*

UCOTVA is designed to address known problems posed by the patchwork nature and inconsistencies found in current laws with regard to vessel titling and do so while imposing few or no new burdens or costs on state titling Commissions. *ULC, Certificate of Title for Vessels Act, Why States Should Adopt.* The Act is supported by organizations of state administrators, boat financiers, and vessel insurers. *Id.*

New Jersey's Current Vessel Titling Law and UCOTVA's Impact If Adopted

New Jersey generates significant economic activity from recreational boating, ranking in the top 20 of all states with 176,641 registered boats. *See* National Marine Manufacturers Association's Release, Economic Significance of Recreational Boating in N.J., http://www.nmma.org/assets/cabinets/Cabinet508/New_Jersey_Boating_Economics%20State.pdf. Recreational boating creates \$2.2 billion in total annual economic impact from 1,049 recreational boating businesses - employing 17,724 workers. *Id.*

Vessel titling in New Jersey is administered by the state's Motor Vehicle Commission pursuant to the Boat Ownership Certificate Act ("BOCA"). *N.J.S.* 12:7A-1 to -29. This chapter was enacted in 1984 and amended shortly before taking effect in 1987. Staff's search of case law revealed very little litigation related to BOCA, which may be a testament to the statute's success. Like the UCOTVA, BOCA was introduced for the purpose of "lower[ing] the incidence of theft of marine equipment" and "improv[ing] the tools available to law enforcement agencies," A141, L.1984, c. 152 (N.J. 1984) (Introductory Statement), but with the additional purpose of "increas[ing] sales tax revenue derived from the sale of marine equipment by establishing a system for titling marine equipment similar to that . . . used for titling motor vehicles." *Id.* Because BOCA's introduction was motivated by concerns similar to those expressed by the ULC regarding vessel ownership certification law, BOCA already addresses many of the problems identified by the ULC and cited as reasons to enact UCOTVA. For example, the ULC observes that few state titling laws for vessels "seem to have been written with much attention . . . at all" to the Uniform Commercial Code (UCC), particularly with regard to UCC Article 9, which deals with security interests. *ULC, Certificate of Title for Vessels Act Summary*. "Accordingly, it is often difficult to harmonize a state's titling law with its laws governing sales of vessels and security interests in vessels. As a result, difficult interpretive problems arise." *Id.* BOCA, unlike these problematic state titling laws, refers directly to the UCC (chapter 9 of Title 12A of the New Jersey Statutes) and makes clear how the two chapters' provisions interrelate. *See N.J.S.* 12:7A-12(i) to (j).

However, enactment of the UCOTVA would result in a number of changes to existing New Jersey law. First, significantly, section 12:7A-3 of BOCA defines the "marine equipment" for which ownership certificates are required as "vessels or hulls greater than 12 feet in length." Section 12:7A-6 provides a number of exceptions, including for "sailboat[s] of 12 feet or less in length," canoes, kayaks, lifeboats, and other non-motorized vessels. Under these provisions, personal watercraft such as jet skis are not required to be titled, although the New Jersey Motor Vehicle Commission does require personal watercraft to be registered. The exclusion of vessels 12 feet or less in length from BOCA's purview is the result of an amendment to the bill first enacted, which would have required titling for all vessels and hulls, regardless of length, as well as all outboard motors. A141, L.1984, c. 152, § 3 (N.J. 1984).

If enacted in New Jersey, UCOTVA would except from titling "watercraft less than 16 feet in length *and* propelled solely by sail, paddle, oar, or an engine of less than 10 horsepower." *ULC, Certificate of Title for Vessels Act*, Section 2 (a)(31)(C) (emphasis added). As a result, some vessels or hulls greater than 12 feet in length would no longer need to be titled, but personal watercraft such as jet skis, which typically are equipped with engines greater than 10 horsepower, *would* need to be titled.

In addition, BOCA requires titling in New Jersey only for “marine equipment principally used in this State,” *N.J.S. 12:7A-5*, and defines “principal use within this State” as being “within this State for a period in excess of 180 consecutive days,” not including time when the vessel was in this State for storage or repair purposes. *Id.* UCOTVA would similarly require titling only for vessels principally used within this state but would define “state of principal use” as “the state on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year.” *ULC, Certificate of Title for Vessels Act*, Section 2 (a)(28). The definition of “state of principal use” in this report incorporates the BOCA definition into the UCOTVA definition to ensure broad coverage of watercraft present in New Jersey. For vessels that are required to be titled under BOCA, purchasers must apply for a certificate of ownership “within 10 days after its purchase.” *N.J.S. 12:7A-12*. UCOTVA would allow buyers 20 days after the later of the date of ownership transfer or the date on which this state becomes the state of principal use. *ULC, Certificate of Title for Vessels Act*, Section 6 (a).

Some provisions of UCOTVA would make statutory certain decisions that BOCA treats as regulatory. For example, under UCOTVA, a certificate of title “is effective even if it contains incorrect information or does not contain required information.” *ULC, Certificate of Title for Vessels Act*, Section 18. BOCA, on the other hand, gives the Motor Vehicle Commission discretion to determine the validity of defective title papers. *N.J.S. 12:7A-18*. As another example, BOCA states that the Motor Vehicle Commission “shall prepare and prescribe forms necessary for the proper administration of this act,” *N.J.S. 12:7A-18*, and specifies neither the information required on an application for a certificate of ownership nor the information required on the certificate itself. UCOTVA, on the other hand, lists all information that must appear on both documents. *ULC, Certificate of Title for Vessels Act*, Sections 7, 9. Adoption of UCOTVA would therefore provide a standard that would allow the Motor Vehicle Commission to exercise discretion in implementing the provisions of the state’s titling statute.

UCOTVA’s branding provision, which would require that hull-damaged vessels be branded as such on their certificates of title, *ULC, Certificate of Title for Vessels Act*, Section 10, would be new to New Jersey. BOCA imposes no such requirement. Its most similar provision is *N.J.S. 12:7A-23*, which provides in part that a certificate of ownership must be surrendered to the Motor Vehicle Commission if the vessel is “changed in any manner so that it is not the marine equipment described in the certificate of ownership.”

The branding provision has received a favorable response from boating community and the marine industry, and if even if New Jersey adopted no other part of UCOTVA, it could adopt the branding provision by amending *N.J.S. 12:7A-23* to require disclosure of hull damage. It should be noted that UCOTVA’s broad definition of “hull damaged” could present interpretive problems, many of which are discussed in a memo written during the Uniform Act’s drafting. Memorandum from Robert S. Fisher, Esq., to Stephen L. Sepinuck, Drafting Committee Member for the Uniform Certificate of Title for Vessels Act (Mar. 18, 2011), *available at* http://www.uniformlaws.org/shared/docs/certificate_of_title_for_vessels/cotav_fisher%20memo_031811.pdf (last visited July 7, 2013). Yet despite the interpretive problems that a broad definition of “hull damaged” might create, such a definition would promote the branding provision’s purpose of boater safety by creating a duty to brand in a wide variety of damage situations.

On the subject of definitions generally, UCOTVA provides definitions for 33 terms and also lists 15 other terms that will apply to the Act as defined in the UCC. *ULC, Certificate of Title for Vessels Act*, Sections 2. BOCA provides definitions for 30 terms. *N.J.S. 12:7A-23*. Only 11 terms are defined in both acts, and those common terms are defined somewhat differently in each act. The most significant differences, include greater specificity in the terms used in the UCOTVA, as well as the UCOTVA's definition of "vessel," which as highlighted previously would change titling requirements. If only certain provisions of UCOTVA are adopted in New Jersey, care must be taken to reconcile the definitions provided with the terms used in the final form of the act.

The Uniform Act addresses a wide variety of vessel titling issues and generally covers similar topics in greater detail than does BOCA. Therefore, if UCOTVA were adopted in New Jersey, the overlap in subject matter would require the repeal of certain provisions of BOCA. Other provisions of BOCA should be retained, however, because they deal with administrative and enforcement issues not covered by the Uniform Act. Section 30 of the foregoing Draft Act sets forth the BOCA sections and subsections recommended for repeal and those recommended for retention.

Conclusion

The principles set forth in this report have been strongly endorsed by the Marine Trades Association of New Jersey and the National Marine Manufacturers Association. Both entities recognize that UCOTVA will benefit New Jersey's recreational marine industry by providing consumer protection, deterring theft, improving vessel recovery, and efficiently integrating Articles 2 and 9 of the UCC. UCOTVA provides added safeguards that will be an important part of the infrastructure needed to strengthen the New Jersey recreational marine industry as it rebuilds from the ravages of Hurricane Sandy.

In summary, Staff recommends revising the current New Jersey law regarding vessel titling by recommending to the Legislature adoption of UCOTVA with appropriate changes and under the short title "New Jersey Certificate of Title for Vessels Act." Staff accordingly recommends repeal of select provisions of the Boat Ownership Certificate Act, *N.J.S. 12:7A*, et seq. The suggested UCOTVA provisions follow and changes to the Uniform Act are shown with strikethrough and underlining.

New Jersey Certificate of Title for Vessels Act (“NJCOTVA”)

Section 1. Short Title.

This act may be cited as the ~~Uniform~~ New Jersey Certificate of Title for Vessels Act.

COMMENT

Other than the substitution of “New Jersey” for “Uniform,” the language of this section is taken directly from the Uniform Act without changes.

Section 2. Definitions.

a. In this act:

(1) “Barge” means a vessel that is not self propelled or fitted for propulsion by sail, paddle, oar, or similar device.

(2) “Builder’s certificate” means a certificate of the facts of build of a vessel described in 46 C.F.R. § 67.99, as amended.

(3) “Buyer” means a person that buys or contracts to buy a vessel.

(4) “Cancel,” with respect to a certificate of title, means to make the certificate ineffective.

(5) “Certificate of origin” means a record created by a manufacturer or importer as the manufacturer’s or importer’s proof of identity of a vessel. The term includes a manufacturer’s certificate or statement of origin and an importer’s certificate or statement of origin. The term does not include a builder’s certificate.

(6) “Certificate of title” means a record, created by the Commission under this act or by a governmental agency of another jurisdiction under the law of that jurisdiction, that is designated as a certificate of title by the Commission or agency and is evidence of ownership of a vessel.

(7) “Dealer” means a person, including a manufacturer, in the business of selling vessels.

(8) “Documented vessel” means a vessel covered by a certificate of documentation issued pursuant to 46 U.S.C. § 12105, as amended. The term does not include a foreign-documented vessel.

(9) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) “Electronic certificate of title” means a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form.

(11) “Foreign-documented vessel” means a vessel the ownership of which is recorded in a registry maintained by a country other than the United States which identifies

each person that has an ownership interest in a vessel and includes a unique alphanumeric designation for the vessel.

(12) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(13) “Hull damaged” means compromised with respect to the integrity of a vessel’s hull by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence, or the sinking of a vessel in a manner that creates a significant risk to the integrity of the vessel’s hull.

(14) “Hull identification number” means the alphanumeric designation assigned to a vessel pursuant to 33 C.F.R. Part 181, as amended.

(15) “Lien creditor”, with respect to a vessel, means:

(A) a creditor that has acquired a lien on the vessel by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(16) “Commission” means Motor Vehicle Commission.

(17) “Owner” means a person that has legal title to a vessel.

(18) “Owner of record” means the owner indicated in the files of the Commission or, if the files indicate more than one owner, the one first indicated.

(19) “Person” means an individual, corporation, business trust, estate, trust, statutory trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) “Purchase” means to take by sale, lease, mortgage, pledge, consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in a vessel.

(21) “Purchaser” means a person that takes by purchase.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Secured party”, with respect to a vessel, means a person:

(A) in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) that is a consignor under N.J.S. 12A:9; or

(C) that holds a security interest arising under N.J.S. 12A:2-401, 2-505, 2-711(3), or 2A-508(5).

(24) “Secured party of record” means the secured party whose name is indicated as the name of the secured party in the files of the Commission or, if the files indicate more than one secured party, the one first indicated.

(25) “Security interest” means an interest in a vessel which secures payment or performance of an obligation if the interest is created by contract or arises under N.J.S. 12A:2-401, 2-505, 2-711(3), or 2A-508(5). The term includes any interest of a consignor in a vessel in a transaction that is subject to N.J.S. 12A:9. The term does not include the special property interest of a buyer of a vessel on identification of that vessel to a contract for sale under N.J.S. 12A:2-401, but a buyer also may acquire a security interest by complying with N.J.S. 12A:9. Except as otherwise provided in N.J.S. 12A:2-505, the right of a seller or lessor of a vessel under N.J.S. 12A:2 or 2A to retain or acquire possession of the vessel is not a security interest, but a seller or lessor also may acquire a security interest by complying with N.J.S. 12A:9. The retention or reservation of title by a seller of a vessel notwithstanding shipment or delivery to the buyer under N.J.S. 12A:2-401 is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a security interest is determined by N.J.S. 12A:1-201(37).

(26) “Sign” means, with present intent to authenticate or adopt a record, to:

(A) make or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(28) “State of principal use” means:

(A) the state on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year; or

(B) if subsection a. of this section does not require that a certificate of title be issued for the vessel by the State of New Jersey, then the state of principal use shall be deemed to be New Jersey if the vessel has been within this State for a period in excess of 180 consecutive days, unless it is in New Jersey for the purpose of wet or dry storage, or for repairs, in which case the actual time for this storage or repairs shall not be counted as included within the 180 day period.

(29) “Title brand” means a designation of previous damage, use, or condition that must be indicated on a certificate of title.

(30) “Transfer of ownership” means a voluntary or involuntary conveyance of an interest in a vessel.

(31) “Vessel” means any watercraft used or capable of being used as a means of transportation on water, except:

(A) a seaplane;

(B) an amphibious vehicle for which a certificate of title is issued pursuant to N.J.S. 39:10-1 to -38 or a similar statute of another state;

(C) watercraft ~~less than 16~~ 12 feet or less in length and propelled solely by sail, paddle, oar, or an engine of less than 10 horsepower;

(D) watercraft that operate only on a permanently fixed, manufactured course and the movement of which is restricted to or guided by means of a mechanical device to which the watercraft is attached or by which the watercraft is controlled;

(E) tender for direct transportation between a watercraft and the shore and for no other purpose (dinghy);

(F) a stationary floating structure that:

(i) does not have and is not designed to have a mode of propulsion of its own;

(ii) is dependent for utilities upon a continuous utility hookup to a source originating on shore; and

(iii) has a permanent, continuous hookup to a shoreside sewage system;

(G) watercraft owned by the United States, a state, or a foreign government or a political subdivision of any of them;

(H) watercraft used solely as a lifeboat on another watercraft; and

(I) any vessel used exclusively for racing while actually competing in or tuning up for an authorized race held under the auspices of a duly incorporated yacht club or racing association, in accordance with the rules and regulations prescribed by the Commission and pursuant to a permit duly issued by the Commission.

(32) “Vessel number” means the alphanumeric designation for a vessel issued pursuant to 46 U.S.C. Section 12301, as amended.

(33) “Written certificate of title” means a certificate of title consisting of information inscribed on a tangible medium.

b. The following definitions and terms also apply to this act:

(1) “Agreement”, N.J.S. 12A:1-201b.3.

(2) “Buyer in ordinary course of business”, N.J.S. 12A:1-201b.9.

(3) “Conspicuous”, N.J.S. 12A:1-201b.10.

(4) “Consumer goods”, N.J.S. 12A:9-102a.23.

(5) “Debtor”, N.J.S. 12A:9-102a.28.

(6) “Knowledge”, N.J.S. 12A:1-201(25)(c).

(7) “Lease”, N.J.S. 12A:2A-103(1)(j).

(8) “Lessor”, N.J.S. 12A:2A-103(1)(p).

(9) “Notice”, N.J.S. 12A:1-201(25).

- (10) “Representative”, N.J.S. 12A:1-201(35).
- (11) “Sale”, N.J.S. 12A:2-106(1).
- (12) “Security agreement”, N.J.S. 12A:9-102a.73.
- (13) “Seller”, N.J.S. 12A:2-103(1)(d).
- (14) “Send”, N.J.S. 12A:1-201(38).
- (15) “Value”, N.J.S. 12A:1-201(44).

c. The definitions in subsections a. and b. do not apply to any state or federal law governing licensing, numbering, or registration if the same term is used in that law.

COMMENT

Whereas current New Jersey law seems to use terms like “title,” “certificate of title,” and “certificate of ownership” interchangeably, UCOTVA uses only one term to refer to the document in question: “certificate of title.” The act’s definitions reflect this choice.

References in the Uniform Act to the UCC have been converted to refer to their corresponding provisions in Title 12A of New Jersey’s Statutes.

Section 2a.31(C) of the Uniform Act has been modified in light of New Jersey’s current titling law, which requires titling for vessels greater than 12 feet in length. This modification avoids a situation in which vessels that were subject to titling requirements under New Jersey’s Boat Ownership Certificate Act, such as 15-foot-long sailboats, would no longer be subject to titling requirements under NJCOTVA.

Note that the definition of “principal use within this state” under current New Jersey Law, *see N.J.S. 12:7A-3s* has been incorporated in the Uniform Act’s definition of “state of principal use.”

Because New Jersey’s vessel titling requirements correspond with its vessel numbering requirements, the New Jersey Boat Act of 1962, *N.J.S. 12:7-34.36 et seq.*, which deals with the vessel numbering, will need to be revised to reflect adoption of the recommended definitions of “state of principal use” or “vessel” or any other change regarding which watercraft are required to be titled.

The definitions added in subsection 31(E) and (I) are derived from the list of watercraft that were not covered under the Boat Ownership Certificate Act, *N.J.S. 12:7A-6b(2) and (5)*.

Section 3. Applicability.

Subject to Section 29, this act applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate of title, or record was entered into or created before [the effective date of this act].

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 4. Supplemental Principles of Law and Equity.

Unless displaced by a provision of this act, the principles of law and equity supplement its provisions.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 5. Law Governing Vessel Covered by Certificate of Title.

a. The local law of the jurisdiction under whose certificate of title a vessel is covered governs all issues relating to the certificate from the time the vessel becomes covered by the certificate until the vessel becomes covered by another certificate or becomes a documented vessel, even if no other relationship exists between the jurisdiction and the vessel or its owner.

b. A vessel becomes covered by a certificate of title when an application for the certificate and the applicable fee are delivered to the Commission in accordance with this act or to the governmental agency that creates a certificate in another jurisdiction in accordance with the law of that jurisdiction.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 6. Certificate of Title Required.

a. Except as otherwise provided in subsections b. and c., the owner of a vessel for which this state is the state of principal use shall deliver to the Commission an application for a certificate of title for the vessel, with the applicable fee, not later than ~~20~~ 10 days after the later of:

- (1) the date of a transfer of ownership; or
- (2) the date this state becomes the state of principal use.

b. An application for a certificate of title is not required for:

- (1) a documented vessel;
- (2) a foreign-documented vessel;
- (3) a barge;
- (4) a vessel before delivery if the vessel is under construction or completed pursuant to contract; or
- (5) a vessel held by a dealer for sale or lease.

c. The Commission may not issue, transfer, or renew a certificate of number for a vessel issued pursuant to the requirements of the New Jersey Boat Act of 1962, N.J.S. 12:7-34.36 et seq., or 46 U.S.C. § 12301, as amended, unless the Commission has created a certificate of title for the vessel or an application for a certificate for the vessel and the applicable fee have been delivered to the Commission

COMMENT

The Uniform Act is modified to reduce the number of days owners are allowed to apply for certificates of title. There are two reasons for this modification: 1) Owners are allowed only 10 days under current New Jersey law, and 2) Increasing the amount of time allowed between sale and title-transfer would also increase the amount of time during which there would be uncertainty as to whose duty it would be—the seller's or the buyer's—to brand the vessel's title, pursuant to Section 10 of the Uniform Act, in the event of damage to the vessel's hull. See Memorandum from Robert S. Fisher, Esq., to Stephen L. Sepinuck, Drafting Committee Member for UCOTVA 2-3 (Mar. 18, 2011), available at http://www.uniformlaws.org/shared/docs/certificate_of_title_for_vessels/cotav_fisher%20memo_031811.pdf.

The modification to subsection c. preserves *N.J.S. 12:7A-5*'s requirement that no certificate of number be issued or renewed for a vessel covered by this act unless the vessel's owner has complied with the act.

Section 7. Application for Certificate of Title.

a. Except as otherwise provided in Sections 10, 15, 19, 20, 21, and 22, only an owner may apply for a certificate of title.

b. An application for a certificate of title must be signed by the applicant and contain:

(1) the applicant's name, the street address of the applicant's principal residence, and, if different, the applicant's mailing address;

(2) the name and mailing address of each other owner of the vessel;

(3) the social security number or taxpayer identification number of each owner;

(4) the hull identification number for the vessel or, if none, an application for the issuance of a hull identification number for the vessel;

(5) the vessel number for the vessel or, if none issued by the Commission, an application for a vessel number;

(6) a description of the vessel as required by the Commission, which must include:

(A) the official number for the vessel, if any, assigned by the United States Coast Guard;

(B) the name of the manufacturer, builder, or maker;

(C) the model year or the year in which the manufacture or build of the vessel was completed;

(D) the overall length of the vessel;

(E) the vessel type;

(F) the hull material;

(G) the propulsion type;

(H) the engine drive type, if any; and

(I) the fuel type, if any;

(7) an indication of all security interests in the vessel known to the applicant and the name and mailing address of each secured party;

(8) a statement that the vessel is not a documented vessel or a foreign-documented vessel;

(9) any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created;

(10) if the applicant knows that the vessel is hull damaged, a statement that the vessel is hull damaged;

(11) if the application is made in connection with a transfer of ownership, the transferor's name, street address, and, if different, mailing address, the sales price, if any, and the date of the transfer; and

(12) 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.

c. In addition to the information required by subsection b., an application for a certificate of title may contain an electronic communication address of the owner, transferor, or secured party.

d. Except as otherwise provided in Section 19, 20, 21, or 22, an application for a certificate of title must be accompanied by:

(1) a certificate of title signed by the owner shown on the certificate and which:

(A) identifies the applicant as the owner of the vessel; or

(B) is accompanied by a record that identifies the applicant as the owner; or

(2) if there is no certificate of title:

(A) if the vessel was a documented vessel, a record issued by the United States Coast Guard which shows the vessel is no longer a documented vessel and identifies the applicant as the owner;

(B) if the vessel was a foreign-documented vessel, a record issued by the foreign country which shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or

(C) in all other cases, a certificate of origin, bill of sale, or other record that to the satisfaction of the Commission identifies the applicant as the owner.

e. A record submitted in connection with an application is part of the application. The Commission shall maintain the record in its files.

f. The Commission may require that an application for a certificate of title be accompanied by payment or evidence of payment of all fees and taxes payable by the applicant under law of this state other than this act in connection with the application or the acquisition or use of the vessel.

COMMENT

The language of this section is taken directly from the Uniform Act without changes and preserves the power of the Commission to set fees as provided in *N.J.S. 12:7A-15b*.

Section 8. Creation and Cancellation of Certificate of Title.

a. Unless an application for a certificate of title is rejected under subsection c. or d., the Commission shall create a certificate for the vessel in accordance with subsection b. not later than 20 days after delivery to it of an application that complies with Section 7.

b. If the Commission creates electronic certificates of title, the Commission shall create an electronic certificate unless in the application the secured party of record or, if none, the owner of record, requests that the Commission create a written certificate.

c. The Commission or other instrumentality of the State that may process certificates of titles and associated functions shall not incur any personal liability in carrying out the provisions of this section or in furnishing any information provided in accord with this Act from the records of the State.

d. Except as otherwise provided in subsection d., the Commission may reject an application for a certificate of title only if:

- (1) the application does not comply with Section 7;
- (2) the application does not contain documentation sufficient for the Commission to determine whether the applicant is entitled to a certificate;
- (3) there is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate would facilitate a fraudulent or illegal act; or
- (4) the application does not comply with the law of this state other than this act.

d. The Commission shall reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel.

e. The Commission may cancel a certificate of title created by it only if the Commission:

- (1) could have rejected the application for the certificate under subsection c.;
- (2) is required to cancel the certificate under another provision of this act; or
- (3) receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

f. The Commission shall provide an opportunity for a hearing at which the owner and any other interested party may present evidence in support of or opposition to cancellation of a certificate of title. The Commission shall serve all owners and secured parties indicated in the files of the Commission with notice of the opportunity for a hearing. Service must be made personally or by mail through the United States Postal Service, properly addressed, postage paid, return receipt requested. Service by mail is complete on deposit with the United States Postal Service. The Commission by rule may authorize service by electronic transmission if a copy is sent on the same day by first-class mail or by a commercial delivery company. If not later than 30 days after the notice was served, the Commission receives a request for a hearing from an interested party, the Commission shall hold the hearing not later than 20 days after receiving the request.

COMMENT

The new language of subsection c. is derived from *N.J.S. 12:7A-15e*.

Section 9. Content of Certificate of Title.

a. A certificate of title must contain:

- (1) the date the certificate was created;
- (2) the name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in the files of the Commission;
- (3) the mailing address of the owner of record;

(4) the hull identification number;

(5) the information listed in Section 7b.(6);

(6) except as otherwise provided in Section 15b., the name and mailing address of the secured party of record, if any, and if not all secured parties are listed, an indication that there are other security interests indicated in the files of the Commission; and

(7) all title brands indicated in the files of the Commission covering the vessel, including brands indicated on a certificate created by a governmental agency of another jurisdiction and delivered to the Commission.

b. This act does not preclude the Commission from noting on a certificate of title the name and mailing address of a secured party that is not a secured party of record.

c. For each title brand indicated on a certificate of title, the certificate must identify the jurisdiction under whose law the title brand was created or the jurisdiction that created the certificate on which the title brand was indicated. If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate, the certificate may state: “Previously branded in (insert the jurisdiction under whose law the title brand was created or whose certificate of title previously indicated the title brand).”

d. If the files of the Commission indicate that a vessel previously was registered or titled in a foreign country, the Commission shall indicate on the certificate of title that the vessel was registered or titled in that country.

e. A written certificate of title must contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest to another person. The form must include a certification, signed under penalty of perjury, that the statements made are true and correct to the best of each owner’s knowledge, information, and belief.

f. A written certificate of title must contain a form for the owner of record to indicate, in connection with a transfer of an ownership interest, that the vessel is hull damaged.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 10. Title Brand.

a. Unless subsection c. applies, at or before the time the owner of record transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the Commission, if the damage occurred while that person was an owner of the vessel and the person has notice of the damage at the time of the transfer, the owner shall:

(1) deliver to the Commission an application for a new certificate that complies with Section 7 and includes the title brand designation “Hull Damaged”; or

(2) indicate on the certificate in the place designated for that purpose that the vessel is hull damaged and deliver the certificate to the transferee.

b. Not later than 20 days after delivery to the Commission of the application under subsection a.1 or the certificate of title under subsection a.2, the Commission shall create a new certificate that indicates that the vessel is branded “Hull Damaged”.

c. Before an insurer transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the Commission, the insurer shall deliver to the Commission an application for a new certificate that complies with Section 6 and includes the title brand designation “Hull Damaged”. Not later than 20 days after delivery of the application to the Commission, the Commission shall create a new certificate that indicates that the vessel is branded “Hull Damaged”.

d. An owner of record that fails to comply with subsection a., a person that solicits or colludes in a failure by an owner of record to comply with subsection a., or an insurer that fails to comply with subsection c. is subject to a civil administrative penalty of not more than \$5,000.

COMMENT

The penalty provided in subsection d. is derived from the penalties provided in *N.J.S. 12:7A-25* for violations of the Boat Ownership Certificate Act.

Section 11. Maintenance of and Access to Files.

a. For each record relating to a certificate of title submitted to the Commission, the Commission shall:

- (1) ascertain or assign the hull identification number for the vessel;
- (2) maintain the hull identification number and all the information submitted with the application pursuant to Section 7b. to which the record relates, including the date and time the record was delivered to the Commission;
- (3) maintain the files for public inspection subject to subsection e.; and
- (4) index the files of the Commission as required by subsection b.

b. The Commission shall maintain in its files the information contained in all certificates of title created under this act. The information in the files of the Commission must be searchable by the hull identification number of the vessel, the vessel number, the name of the owner of record, and any other method used by the Commission.

c. The Commission shall maintain in its files, for each vessel for which it has created a certificate of title, all title brands known to the Commission, the name of each secured party known to the Commission, the name of each person known to the Commission to be claiming an ownership interest, and all stolen-property reports the Commission has received.

d. Upon request, for safety, security, or law-enforcement purposes, the Commission shall provide to federal, state, or local government the information in its files relating to any vessel for which the Commission has issued a certificate of title.

e. Except as otherwise provided by the law of this state other than this act, the information required under Section 9 is a public record. The information provided under Section 7b.3 is not a public record.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 12. Action Required on Creation of Certificate of Title.

a. On creation of a written certificate of title, the Commission promptly shall send the certificate to the secured party of record or, if none, to the owner of record, at the address indicated for that person in the files of the Commission. On creation of an electronic certificate of title, the Commission promptly shall send a record evidencing the certificate to the owner of record and, if there is one, to the secured party of record, at the address indicated for that person in the files of the Commission. The Commission may send the record to the person's mailing address or, if indicated in the files of the Commission, an electronic address.

b. If the Commission creates a written certificate of title, any electronic certificate of title for the vessel is canceled and replaced by the written certificate. The Commission shall maintain in the files of the Commission the date and time of cancellation.

c. Before the Commission creates an electronic certificate of title, any written certificate for the vessel must be surrendered to the Commission. If the Commission creates an electronic certificate, the Commission shall destroy or otherwise cancel the written certificate for the vessel which has been surrendered to the Commission and maintain in the files of the Commission the date and time of destruction or other cancellation. If a written certificate being canceled is not destroyed, the Commission shall indicate on the face of the certificate that it has been canceled.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 13. Effect of Certificate of Title.

A certificate of title is prima facie evidence of the accuracy of the information in the record that constitutes the certificate.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 14. Effect of Possession of Certificate of Title; Judicial Process.

Possession of a certificate of title does not by itself provide a right to obtain possession of a vessel. Garnishment, attachment, levy, replevin, or other judicial process against the certificate is not effective to determine possessory rights to the vessel. This act does not prohibit enforcement under law of this state other than this act of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vessel. Absence of an indication of a statutory or common-law lien on a certificate does not invalidate the lien.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 15. Perfection of Security Interest.

a. Except as otherwise provided in this section or Section 29, a security interest in a vessel may be perfected only by delivery to the Commission of an application for a certificate of title that identifies the secured party and otherwise complies with Section 7. The security interest is perfected on the later of delivery to the Commission of the application and the applicable fee or attachment of the security interest under *N.J.S. 12A:9-203*.

b. If the interest of a person named as owner, lessor, consignee, or bailor in an application for a certificate of title delivered to the Commission is a security interest, the application sufficiently identifies the person as a secured party. Identification on the application for a certificate of a person as owner, lessor, consignee, or bailor is not by itself a factor in determining whether the person's interest is a security interest.

c. If the Commission has created a certificate of title for a vessel, a security interest in the vessel may be perfected by delivery to the Commission of an application, on a form the Commission may require, to have the security interest added to the certificate. The application must be signed by an owner of the vessel or by the secured party and must include:

- (1) the name of the owner of record;
- (2) the name and mailing address of the secured party;
- (3) the hull identification number for the vessel; and
- (4) if the Commission has created a written certificate of title for the vessel, the certificate.

d. A security interest perfected under subsection c. is perfected on the later of delivery to the Commission of the application and all applicable fees or attachment of the security interest under N.J.S. 12A:9-203.

e. On delivery of an application that complies with subsection c. and payment of all applicable fees, the Commission shall create a new certificate of title pursuant to Section 8 and deliver the new certificate or a record evidencing an electronic certificate pursuant to Section 12a. The Commission shall maintain in the files of the Commission the date and time of delivery of the application to the Commission.

f. If a secured party assigns a perfected security interest in a vessel, the receipt by the Commission of a statement providing the name of the assignee as secured party is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. A purchaser of a vessel subject to a security interest which obtains a release from the secured party indicated in the files of the Commission or on the certificate takes free of the security interest and of the rights of a transferee unless the transfer is indicated in the files of the Commission or on the certificate.

g. This section does not apply to a security interest:

- (1) created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is in the business of selling vessels;
- (2) in a barge for which no application for a certificate of title has been delivered to the Commission; or
- (3) in a vessel 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 the Commission.

h. This subsection applies if a certificate of documentation for a documented vessel is deleted or canceled. If a security interest in the vessel was valid immediately before deletion or cancellation against a third party as a result of compliance with 46 U.S.C. Section 31321, the

security interest is and remains perfected until the earlier of four months after cancellation of the certificate or the time the security interest becomes perfected under this act.

i. A security interest in a vessel arising under N.J.S. 12A:2-401, 2-505, 2-711(3), or 2A-508(5) is perfected when it attaches but becomes unperfected when the debtor obtains possession of the vessel, unless before the debtor obtains possession the security interest is perfected pursuant to subsection a. or c.

j. A security interest in a vessel as proceeds of other collateral is perfected to the extent provided in N.J.S. 12A:9-315.

k. A security interest in a vessel perfected under the law of another jurisdiction is perfected to the extent provided in N.J.S. 12A:9-316(d).

COMMENT

References in the Uniform Act to the UCC have been converted to refer to their corresponding provisions in Title 12A of New Jersey's Statutes.

Section 16. Termination Statement.

a. A secured party indicated in the files of the Commission as having a security interest in a vessel shall deliver a termination statement to the Commission and, on the debtor's request, to the debtor, by the earlier of:

(1) 20 days after the secured party receives a signed demand from an owner for a termination statement and there is no obligation secured by the vessel subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel.

(2) if the vessel is consumer goods, 30 days after there is no obligation secured by the vessel and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel; or

b. If a written certificate of title has been created and delivered to a secured party and a termination statement is required under subsection a., the secured party, not later than the date required by subsection a., shall deliver the certificate to the debtor or to the Commission with the statement. If the certificate is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, the secured party shall deliver with the statement, not later than the date required by subsection a., an application for a replacement certificate meeting the requirements of Section 22.

c. On delivery to the Commission of a termination statement authorized by the secured party, the security interest to which the statement relates ceases to be perfected. If the security interest to which the statement relates was indicated on the certificate of title, the Commission shall create a new certificate and deliver the new certificate or a record evidencing an electronic certificate. The Commission shall maintain in its files the date and time of delivery to the Commission of the statement.

d. A secured party that fails to comply with this section is liable for any loss that the secured party had reason to know might result from its failure to comply and which could not reasonably have been prevented and for the cost of an application for a certificate of title under Section 7 or 22.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 17. Transfer of Ownership.

a. On voluntary transfer of an ownership interest in a vessel covered by a certificate of title, the following rules apply:

(1) If the certificate is a written certificate of title and the transferor's interest is noted on the certificate, the transferor promptly shall sign the certificate and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transferor's compliance with this paragraph. A secured party does not have a duty to facilitate the transferor's compliance with this paragraph if the proposed transfer is prohibited by the security agreement.

(2) If the certificate of title is an electronic certificate of title, the transferor promptly shall sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee.

(3) The transferee has a right enforceable by specific performance to require the transferor comply with paragraph (1) or (2).

b. The creation of a certificate of title identifying the transferee as owner of record satisfies subsection a.

c. A failure to comply with subsection a. or to apply for a new certificate of title does not render a transfer of ownership of a vessel ineffective between the parties. Except as otherwise provided in Section 18, 19, 23a., or 24, a transfer of ownership without compliance with subsection a. is not effective against another person claiming an interest in the vessel.

d. A transferor that complies with subsection a. is not liable as owner of the vessel for an event occurring after the transfer, regardless of whether the transferee applies for a new certificate of title.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 18. Effect of Missing or Incorrect Information.

Except as otherwise provided in N.J.S. 12A:9-337, a certificate of title or other record required or authorized by this act is effective even if it contains incorrect information or does not contain required information.

COMMENT

The reference in the Uniform Act to the UCC has been converted to refer to its corresponding provision in Title 12A of New Jersey's Statutes.

Section 19. Transfer of Ownership by Secured Party's Transfer Statement.

a. In this section, "secured party's transfer statement" means a record signed by the secured party of record stating:

(1) that there has been a default on an obligation secured by the vessel;

(2) the secured party of record is exercising or has exercised post-default remedies with respect to the vessel;

(3) by reason of the exercise, the secured party of record has the right to transfer the ownership interest of an owner, and the name of the owner;

(4) the name and last-known mailing address of the owner of record and the secured party of record;

(5) the name of the transferee;

(6) other information required by Section 7b.; and

(7) one of the following:

(A) the certificate of title is an electronic certificate;

(B) the secured party does not have possession of the written certificate of title created in the name of the owner of record; or

(C) the secured party is delivering the written certificate of title to the Commission with the secured party's transfer statement.

b. Unless the Commission rejects a secured party's transfer statement for a reason stated in Section 8c., not later than 20 days after delivery to the Commission of the statement and payment of fees and taxes payable under the law of this state other than this act in connection with the statement or the acquisition or use of the vessel, the Commission shall:

(1) accept the statement;

(2) amend the files of the Commission 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 the Commission;

(B) create a new certificate indicating the transferee as owner; and

(C) deliver the new certificate or a record evidencing an electronic certificate.

c. An application under subsection a. or the creation of a certificate of title under subsection (b) is not by itself a disposition of the vessel and does not by itself relieve the secured party of its duties under N.J.S. 12A:9.

COMMENT

The reference in the Uniform Act to the UCC has been converted to refer to its corresponding provision in Title 12A of New Jersey's Statutes.

Section 20. Transfer by Operation of Law.

a. In this section:

(1) "By operation of law" means pursuant to a law or judicial order affecting ownership of a vessel:

(A) because of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;

(B) through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or

(C) through other legal process.

(2) “Transfer-by-law statement” means a record signed by a transferee stating that by operation of law the transferee has acquired or has the right to acquire an ownership interest in a vessel.

b. A transfer-by-law statement must contain:

(1) the name and last known mailing address of the owner of record and the transferee and the other information required by Section 7b.;

(2) documentation sufficient to establish the transferee’s ownership interest or right to acquire the ownership interest;

(3) a statement that:

(A) the certificate of title is an electronic certificate of title;

(B) the transferee does not have possession of the written certificate of title created in the name of the owner of record; or

(C) the transferee is delivering the written certificate to the Commission with the transfer-by-law statement; and

(4) except for a transfer described in subsection a.1(A), evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in the files of the Commission as having an interest, including a security interest, in the vessel.

c. Unless the Commission rejects a transfer-by-law statement for a reason stated in Section 8c. or because the statement does not include documentation satisfactory to the Commission as to the transferee’s ownership interest or right to acquire the ownership interest, not later than 20 days after delivery to the Commission of the statement and payment of fees and taxes payable under the law of this state other than this act in connection with the statement or with the acquisition or use of the vessel, the Commission shall:

(1) accept the statement;

(2) amend the files of the Commission 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 the Commission;

(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.

d. This section does not apply to a transfer of an interest in a vessel by a secured party under N.J.S. 12A:9-6.

COMMENT

The reference in the Uniform Act to the UCC has been converted to refer to its corresponding provision in Title 12A of New Jersey's Statutes.

Section 21. Application for Transfer of Ownership or Termination of Security Interest Without Certificate of Title.

a. Except as otherwise provided in Section 19 or 20, if the Commission receives, unaccompanied by a signed certificate of title, an application for a new certificate that includes an indication of a transfer of ownership or a termination statement, the Commission may create a new certificate under this section only if:

(1) all other requirements under Sections 7 and 8 are met;

(2) the applicant provides an affidavit stating facts showing the applicant is entitled to a transfer of ownership or termination statement;

(3) the applicant provides the Commission with satisfactory evidence that notification of the application has been sent to the owner of record and all persons indicated in the files of the Commission as having an interest, including a security interest, in the vessel, at least 45 days have passed since the notification was sent, and the Commission has not received an objection from any of those persons; and

(4) the applicant submits any other information required by the Commission as evidence of the applicant's ownership or right to terminate the security interest, and the Commission has no credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel.

b. Before issuing a certificate of title the Commission may require the person to advertise in a newspaper having a general circulation in the county where the person resides, or where the vessel is located, or both, for the space of two weeks, at least once a week, a notice briefly stating that the person has applied to the Commission to correct defects in the vessel or receive a certificate of title out of time, or as the case may be, giving a description of the vessel as provided by regulation, and that if anyone desires to be heard in opposition the applicant may do so by appearing before the Commission on a date and at a place named, or communicating with the Commission prior to the named date. The applicant shall also serve like notice on local police, both where the applicant resides and where the vessel is located, the State Marine Police Force, and any other person or agency as prescribed by the director. The notice shall be made personally or by certified mail. Proofs of the publication and service shall be submitted to the Commission. The Commission may have the notice advertised or served at the cost and expense of the applicant.

c. The Commission may indicate in a certificate of title created under subsection a. that the certificate was created without submission of a signed certificate or termination statement. Unless credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel is delivered to the Commission not later than one year

after creation of the certificate, on request in a form and manner required by the Commission, the Commission shall remove the indication from the certificate.

d. Unless the Commission determines that the value of a vessel is less than \$5,000, before the Commission creates a certificate of title under subsection a., the Commission may require the applicant to post a bond or provide an equivalent source of indemnity or security. The bond, indemnity, or other security may not exceed twice the value of the vessel as determined by the Commission. The bond, indemnity, or other security must be in a form required by the Commission and provide for indemnification of any owner, purchaser, or other claimant for any expense, loss, delay, or damage, including reasonable attorney's fees and costs, but not including incidental or consequential damages, resulting from creation or amendment of the certificate.

e. The Commission may promulgate regulations supplementing this section, prescribing a procedure for the issuance of a certificate of ownership to a purchaser who purchased a vessel in a state or jurisdiction that does not require or issue a certificate of title.

f. Unless the Commission receives a claim for indemnity not later than one year after creation of a certificate of title under subsection a., on request in a form and manner required by the Commission, the Commission shall release any bond, indemnity, or other security.

g. This section does not apply to a transfer of an interest in a vessel deemed to have been abandoned under N.J.S. 12:7C-1 to -20.

COMMENT

The new language of subsection b. and f. is derived from *N.J.S. 12:7A-18c.* and d. The addition of subsection g. preserves the title transfer process provided by *N.J.S. 12:7C-1 to -20*, which deals with the disposition of abandoned or sunken vessels.

Section 22. Replacement Certificate of Title.

a. If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the secured party of record or, if no secured party is indicated in the files of the Commission, the owner of record may apply for and, by furnishing information satisfactory to the Commission, obtain a replacement certificate in the name of the owner of record. The Commission shall collect a fee for this replacement certificate.

b. An applicant for a replacement certificate of title must sign the application, and, except as otherwise permitted by the Commission, the application must comply with Section 7. The application must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable.

c. A replacement certificate of title created by the Commission must comply with Section 9 and indicate on the face of the certificate that it is a replacement certificate.

d. If a person receiving a replacement certificate of title subsequently obtains possession of the original written certificate, the person promptly shall destroy the original certificate of title.

e. A person who falsely states, in an application to the Commission for a replacement certificate of title, that a certificate of title is lost shall be subject to the penalties of N.J.S. 12:7A-25. Notwithstanding any other provision of law, a prosecution may be commenced at any time up to three years after the issuance of the replacement certificate.

COMMENT

The new language of this section is derived from *N.J.S. 12:7A-13*.

Section 23. Rights of Purchaser Other Than Secured Party.

a. A buyer in ordinary course of business has the protections afforded by *N.J.S. 12A:2-403(2)* and *9-320(a)* even if an existing certificate of title was not signed and delivered to the buyer or a new certificate listing the buyer as owner of record was not created.

b. Except as otherwise provided in Sections 17 and 24, the rights of a purchaser of a vessel which is not a buyer in ordinary course of business or a lien creditor are governed by Title 12A.

COMMENT

References in the Uniform Act to the UCC have been converted to refer to their corresponding provisions in Title 12A of New Jersey's Statutes.

Section 24. Rights of Secured Party.

a. Subject to subsection b., the effect of perfection and nonperfection of a security interest and the priority of a perfected or unperfected security interest with respect to the rights of a purchaser or creditor, including a lien creditor, is governed by Title 12A.

b. If, while a security interest in a vessel is perfected by any method under this act, the Commission 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 that is perfected under Section 15 after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

COMMENT

The reference in the Uniform Act to the UCC has been converted to refer to Title 12A of New Jersey's Statutes.

Section 25. Duties and Operation of Commission.

a. The Commission shall retain the evidence used to establish the accuracy of the information in its files relating to the current ownership of a vessel and the information on the certificate of title.

b. The Commission shall retain in its files all information regarding a security interest in a vessel for at least 10 years after the Commission receives a termination statement regarding the security interest. The information must be accessible by the hull identification number for the vessel and any other methods provided by the Commission.

c. If a person submits a record to the Commission, or submits information that is accepted by the Commission, and requests an acknowledgment of the filing or submission, the Commission shall send to the person an acknowledgment showing the hull identification number of the vessel

to which the record or submission relates, the information in the filed record or submission, and the date and time the record was received or the submission accepted. A request under this section must contain the hull identification number and be delivered by means authorized by the Commission.

d. The Commission shall send or otherwise make available in a record the following information to any person that requests it and pays the applicable fee:

(1) whether the files of the Commission indicate, as of a date and time specified by the Commission, but not a date earlier than three days before the Commission received the request, any certificate of title, security interest, termination statement, or title brand that relates to a vessel:

(A) identified by a hull identification number designated in the request;

(B) identified by a vessel number designated in the request; or

(C) owned by a person designated in the request;

(2) with respect to the vessel:

(A) the name and address of any owner as indicated in the files of the Commission or on the certificate of title;

(B) the name and address of any secured party as indicated in the files of the Commission or on the certificate, and the effective date of the information; and

(C) a copy of any termination statement indicated in the files of the Commission and the effective date of the termination statement; and

(3) with respect to the vessel, a copy of any certificate of origin, secured party transfer statement, transfer by law statement under Section 20, and other evidence of previous or current transfers of ownership.

e. In responding to a request under this section, the Commission may provide the requested information in any medium. On request, the Commission shall send the requested information in a record that is self-authenticating under N.J. R. Evid. 902.

COMMENT

The language of this section is taken directly from the Uniform Act without changes, except that the applicable New Jersey rule of evidence has been inserted.

Section 26. Liberal Construction of Act; Uniformity of Application and Construction.

a. This act shall be construed liberally to effectuate its purposes. Any act or parts of acts inconsistent with this act are hereby superseded. If any section or provision or rule or regulation issued pursuant to this act is held invalid, such ruling shall not affect the validity of the remainder of the sections or regulations of this act.

b. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

COMMENT

The language of subsection (a) is taken directly from *N.J.S. 12:7A-27*. The language of subsection (b) is taken directly from the Uniform Act without changes.

Section 27. Relation to Electronic Signatures in Global and National Commerce Act.

This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 28. Rules and Regulations

a. The Commission is authorized to adopt, pursuant to law, regulations to implement the provisions of this act. The Commission shall, to the maximum extent practicable and feasible, adopt regulations similar to those adopted for implementation of chapter 10 of Title 39 of the Revised Statutes.

b. The Commission may adopt regulations regarding stop sale, stop use or stop movement orders in lieu of seizure, whether actual or constructive, of marine equipment that does not conform to the provisions of this act or any regulations adopted pursuant to this act.

c. The Commission shall adopt, and may amend, rules providing a schedule of reasonable fees similar to those adopted for implementation of chapter 10 of Title 39 of the Revised Statutes, to the maximum extent practicable and feasible, to defray the administrative costs of issuing certificates of ownership, providing copies and duplicates of certificates, and filing certificates, as provided for by Sections 6, 7, 15, 21, 22 and 25 of this act.

d. All rules and regulations for the implementation of this act shall be adopted by the Commission pursuant to the provisions of the “Administrative Procedure Act,” P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

COMMENT

The language of this section is derived from *N.J.S. 12:7A-28*.

Section 29. Savings Clause.

a. The rights, duties, and interests flowing from a transaction, certificate of title, or record relating to a vessel which was validly entered into or created before [the effective date of this act] and would be subject to this act if it had been entered into or created on or after [the effective date of this act], remain valid on and after [the effective date of this act].

b. This act does not affect an action or proceeding commenced before [the effective date of this act].

c. Except as otherwise provided in subsection d., a security interest that is enforceable immediately before [the effective date of this act] and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act.

d. A security interest perfected immediately before [the effective date of this act] remains perfected until the earlier of:

(1) the time perfection would have ceased under the law under which the security interest was perfected; or

(2) three years after [the effective date of this act].

e. This act does not affect the priority of a security interest in a vessel if immediately before [the effective date of this act] the security interest is enforceable and perfected, and that priority is established.

COMMENT

The language of this section is taken directly from the Uniform Act without changes.

Section 30. Repeals.

The following acts and parts of acts are repealed:

N.J.S. 12:7A-3

N.J.S. 12:7A-5 to 12:7A-6

N.J.S. 12:7A-10 to 12:7A-15

N.J.S. 12:7A-18

N.J.S. 12:7A-19

N.J.S. 12:7A-27

COMMENT

Note that *N.J.S. 12:7A-20* has already been repealed.

The provisions of *N.J.S. 12:7A* that have not been repealed have been retained in order to address certain administrative and enforcement issues not addressed in the Uniform Act. The *N.J.S. 12:7A* provisions that remain in force will need to be revised to reflect the terms and definitions adopted in this act, as well as to refer to this act as the state's controlling vessel titling statute. The following sections and subsections have been retained:

N.J.S. 12:7A-1 to 12:7A-2

N.J.S. 12:7A-4

N.J.S. 12:7A-7 to 12:7A-9

N.J.S. 12:7A-16 to 12:7A-17

N.J.S. 12:7A-21 to 12:7A-26

N.J.S. 12:7A-28 to 12:7A-29