

BILL ANALYSIS

H.B. 4895
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Culture, Recreation & Tourism
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The National Marine Manufacturers Association (NMMA) is the leading trade association for the North American recreational boating industry, representing manufacturers of recreational boats, marine engines, and accessories. The recreational boating industry contributes \$230 billion to the U.S. economy and supports over 812,000 jobs across 36,000 marine businesses nationwide. H.B. 4895 seeks to make changes regarding the certificates of number and certificates of title issued by and records kept by the Parks and Wildlife Department with a goal of improving vessel financing and insurance options, boosting resale value through verified ownership records, aiding law enforcement in theft prevention and recovery, and strengthening the recreational boating industry by enhancing market transparency, preventing fraud, and protecting dealers from inadvertently acquiring stolen or encumbered vessels.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Parks and Wildlife Commission in SECTION 1 of this bill.

ANALYSIS

H.B. 4895 amends the Parks and Wildlife Code to revise provisions relating to certificates of number and certificates of title issued by and records kept by the Parks and Wildlife Department (TPWD).

General Provisions

H.B. 4895 removes the requirement that an amphibious vehicle have a certificate of number.

H.B. 4895 authorizes an electronic version of a certificate of number provided by TPWD to be carried on board an applicable vessel at all times, as an alternative to carrying on board at all times the certificate or a facsimile of the certificate.

H.B. 4895 changes the deadline for the new owner of a vessel to submit an application to TPWD with the applicable required information from not later than the 45th day after the date ownership was transferred to not later than the 20th day after that date.

H.B. 4895 establishes that the records containing the information required for a certificate of title under the Water Safety Act that are made or kept by TPWD are public records but excludes the following information as public records under the act;

- an owner identifier as prescribed by specified federal regulations relating to the contents of an application for certificate of number;
- the phone number, email address, social security number, or taxpayer identification number of an owner of a vessel or outboard motor; and
- any other information contained in an ownership record that is not subject to public disclosure under state public information law or other law.

The bill authorizes TPWD to provide a record in any medium and, if requested, requires TPWD to provide a record in a format that is self-authenticating under applicable provisions of the Texas Rules of Evidence.

H.B. 4895 changes from not later than the 45th day to not later than the 20th day the deadline by which a licensed dealer, distributor, or manufacturer must apply, at the first or subsequent sale, in the name of the purchaser for a certificate of title for a vessel or outboard motor and file with TPWD the applicable documents to transfer the certificate number or certificate of title. The bill shortens the period during which a person purchasing a vessel may use the temporary facsimile number from not more than 45 days from the date the dealer, distributor, or manufacturer applies for a certificate of number or a certificate of title to not more than 20 days from that date.

H.B. 4895 authorizes the Parks and Wildlife Commission to set an amount greater than the \$25 fee currently required for the following documents:

- an application for a manufacturer's hull identification number for a vessel that does not have that identification; and
- a sworn statement describing a vessel with an altered, defaced, mutilated, or removed hull identification number or an outboard motor with an altered, defaced, mutilated, or removed serial number.

H.B. 4895 renames a manufacturer's or importer's certificate, which evidences the ownership of a new vessel or a new outboard motor, a certificate of origin.

H.B. 4895 includes the following vessels among those whose ownership is not required to be evidenced by a certificate of title issued by TPWD:

- a watercraft owned by the United States, a state, a foreign government, or a political subdivision of the United States, a state, or a foreign government;
- a watercraft used solely as a lifeboat on another watercraft; or
- an amphibious vehicle for which a certificate of title is issued under the Certificate of Title Act or a similar law of another state.

H.B. 4895 replaces the requirement for the purchaser of a vessel or an outboard motor, except as otherwise provided, to apply to TPWD or to a county tax assessor-collector for a certificate of title not later than the 45th day after the date of the sale of the vessel or outboard motor with a requirement for the owner of a vessel or outboard motor for which Texas is the state of principal use, except as otherwise provided, to deliver to TPWD or to a county tax assessor-collector an application for a certificate of title for the vessel or outboard motor, with the applicable fee, not later than the 20th day after the later of the date of purchase or transfer of ownership or the date that Texas becomes the state of principal use. The bill establishes that the state of principal use of a vessel or outboard motor is the state on whose waters a vessel or outboard motor is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year. The bill, with respect to the requirement that a manufacturer or a dealer who sells a vessel or an outboard motor to a person other than a manufacturer or a dealer apply to TPWD or to a county tax assessor-collector for a certificate of title for the vessel or outboard motor in the name of the purchaser, changes the deadline from not later than the 45th day after the date of a sale to not later than the 20th day after that date.

Definitions

H.B. 4895 does the following with respect to terms defined for purposes of the Water Safety Act:

- excepts the following from the definition of "vessel":
 - a watercraft exempted by Parks and Wildlife Commission rule;
 - a watercraft that operates only on a permanently fixed, manufactured course, 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;
 - a seaplane; and
 - a stationary floating structure that:
 - does not have and is not designed to have a mode of propulsion of its own;
 - is dependent for utilities upon a continuous utility hookup to a source originating on shore; and
 - has a permanent, continuous hookup to a shoreside sewage system;
- changes the definition of "vessel livery" from a business establishment engaged in renting or hiring out vessels for profit to a person engaged in advertising, renting, or hiring out vessels for consideration;
- specifies that "vessel livery" includes a recreational equipment timeshare business that leases or rents vessels for consideration;
- includes in the definition of "manufacturer" a person engaged in the business of importing new and unused vessels and outboard motors for the purpose of sale or trade;
- defines "cancel" as, with respect to a certificate of title, making the certificate ineffective;
- defines "certificate of title" as, with respect to a vessel or outboard motor, a record, created by TPWD under the Water Safety Act or by a governmental agency of another jurisdiction under the law of that jurisdiction, that is designated as a certificate of title by TPWD or the agency and is evidence of ownership of a vessel or outboard motor;
- defines "electronic" as relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- defines "hull identification number" as the alphanumeric designation assigned to a vessel under federal regulations relating to manufacture requirements;
- defines "owner of record" or "recorded owner" as an owner indicated in TPWD's files;
- defines "purchase" as, with respect to a vessel or outboard motor, taking by any voluntary transaction that creates an interest in the vessel or outboard motor;
- defines "purchaser" as a person who takes by purchase;
- defines "record" as information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form; and
- does the following with respect to the term "security interest":
 - defines the term, with respect to a vessel or outboard motor, as an interest in the vessel or outboard motor that secures payment or performance of an obligation if the interest is created by contract or arises under certain specified Business & Commerce Code provisions, except that the retention or reservation of title by a seller of a vessel or outboard motor notwithstanding shipment or delivery to the buyer under Business & Commerce Code provisions relating to the passing of a title and a reservation for security is limited in effect to a reservation of a security interest;
 - specifies that the term includes any interest of a consignor in a vessel or outboard motor in a transaction that is subject to Business & Commerce Code provisions relating to secured transactions; and
 - specifies that the term does not include the following:
 - the special property interest of a buyer of a vessel or outboard motor on identification of that vessel or outboard motor to a contract for sale under Business & Commerce Code provisions relating to a seller's shipment

under reservation, unless a buyer acquires a security interest by complying with Business & Commerce Code provisions relating to secured transactions;

- the right of a seller or lessor of a vessel or outboard motor under Business & Commerce Code provisions relating to sales or leases to retain or acquire possession of the vessel or outboard motor, except as otherwise provided by Business & Commerce Code provisions relating to a seller's shipment under reservation or unless a seller or lessor acquires a security interest by complying with Business & Commerce Code provisions relating to secured transactions; or
- an interest created by a transaction in the form of a lease, unless the transaction created a security interest under Business & Commerce Code provisions relating to distinguishment of a lease from a security interest.

H.B. 4895 defines the following terms for purposes of statutory provisions relating to certificates of title for vessels and outboard motors:

- "barge" as a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device;
- "builder's certificate" as a certificate of the facts of build of a vessel described in federal regulations relating to evidence of build;
- "buyer" as including, with respect to a vessel or outboard motor, a person who contracts to buy the vessel or outboard motor;
- "certificate of origin" as a record created by a manufacturer or importer as proof of identity of a vessel or outboard motor, including a manufacturer's certificate or statement of origin and an importer's certificate or statement of origin, but not including a builder's certificate;
- "debtor" by reference to Business & Commerce Code provisions relating to secured transactions;
- "documented vessel" as a vessel covered by a certificate of documentation issued under applicable federal regulations, not including a foreign-documented vessel;
- "electronic certificate of title" as a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form;
- "foreign-documented vessel" as a vessel the ownership of which is recorded in a registry maintained by a country other than the United States that identifies each person that has an ownership interest in the vessel and includes a unique alphanumeric designation for the vessel;
- "hull damaged" as, with respect to a vessel, the integrity of the vessel's hull being compromised by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence or the sinking of the vessel in a manner that creates a significant risk to the integrity of the vessel's hull;
- "lease" and "lessor" by reference to Business & Commerce Code provisions relating to leases;
- "lien creditor" by reference to Business & Commerce Code provisions relating to secured transactions;
- "secured party" as, with respect to a vessel or outboard motor, the following:
 - a person in whose favor a security interest is created or provided for under a security agreement, regardless of whether any obligation to be secured is outstanding;
 - a person who is a consignor under Business & Commerce Code provisions relating to secured transactions; or
 - a person who holds a security interest arising under certain Business & Commerce Code provisions;
- "secured party of record" as the secured party whose name is indicated as the name of the secured party in the files of TPWD or, if the files indicate more than one secured party, the one first indicated;

- "title brand" as a designation of previous damage, use, or condition that must be indicated on a certificate of title;
- "transfer of ownership" as a voluntary or involuntary conveyance of an interest in a vessel or an outboard motor; and
- "written certificate of title" as a certificate of title consisting of information inscribed on a tangible medium.

Required Contents of Certificate of Title Application Form

H.B. 4895 revises the required contents of the application form prescribed by TPWD for vessel and outboard motor certificates of title as follows:

- clarifies that the owner's address includes the owner's principal residence address and mailing address;
- clarifies that a description of the vessel or outboard motor's fuel is a requirement is a description of the fuel type;
- if the application is for a vessel, includes the following:
 - a statement that the vessel is not a documented vessel or a foreign-documented vessel; and
 - if the applicant knows that the vessel is hull damaged, a statement that the vessel is hull damaged;
- if the vessel or outboard motor was previously titled or registered, includes the following:
 - the transferor's name and address;
 - when applicable, the name of the state in which the vessel or outboard motor was previously titled or registered; and
 - any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was designated;
- clarifies that a manufacturer's or importer's certificate is a manufacturer's or importer's certificate of origin;
- if the vessel was a documented vessel, includes a record issued by the Coast Guard that shows the vessel is no longer documented and identifies the applicant as the owner, or is accompanied by a record that identifies the applicant as the owner; and
- if the vessel was a foreign-documented vessel, includes a record issued by the foreign country that shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner, or is accompanied by a record that identifies the applicant as the owner.

The bill authorizes the Parks and Wildlife Commission to set an amount greater than the \$25 for a certificate of title on a homemade vessel for game warden inspection.

Issuance, Rejection, and Cancellation of Certificates of Title

H.B. 4895 requires TPWD, unless an application for a certificate of title is rejected under the bill's provisions, to issue a certificate of title for a vessel or outboard motor not later than the 20th day after the date TPWD receives an application that complies with the Water Safety Act. The bill requires TPWD, if TPWD issues electronic certificates of title, to issue an electronic certificate of title unless in the application the secured party of record or, if none, the owner of record, requests that TPWD issue a written certificate of title. The bill authorizes TPWD to reject an application for a certificate of title only under the following circumstances:

- the application does not comply with the Water Safety Act or other applicable law;
- the application does not contain documentation sufficient for TPWD to determine whether the applicant is entitled to a certificate of title; or
- TPWD finds a reasonable basis for concluding that the application is fraudulent or issuance of a certificate of title to the applicant would facilitate a fraudulent or illegal act.

The bill requires TPWD to reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel.

H.B. 4895 requires TPWD, on issuance of a written certificate of title, to promptly send the certificate of title to the secured party of record or, if none, to the owner of record, at the address indicated for that person in TPWD's files. The bill requires TPWD, on issuance of an electronic certificate of title, to promptly send a record evidencing the certificate of title to the owner of record and, if there is one, to the secured party of record, at the address indicated for that person in TPWD's files. The bill authorizes TPWD to send the record to the person's mailing address or, if indicated in TPWD's files, an electronic address.

H.B. 4895 establishes that, if TPWD issues a written certificate of title for a vessel or outboard motor, any electronic certificate of title for the vessel or outboard motor is canceled and replaced by the written certificate of title. The bill requires TPWD to maintain in TPWD's files the date and time of cancellation.

H.B. 4895 requires any written certificate of title for a vessel or outboard motor to be surrendered to TPWD before TPWD issues an electronic certificate of title. The bill requires TPWD, if TPWD issues an electronic certificate of title, to destroy or otherwise cancel the written certificate of title for the vessel or outboard motor that has been surrendered to TPWD and maintain in TPWD's files the date and time of destruction or other cancellation. The bill requires TPWD, if a written certificate of title being canceled is not destroyed, to indicate on the face of the certificate that it has been canceled. The bill authorizes TPWD to cancel a certificate of title issued by TPWD only under the following circumstances:

- TPWD could have rejected the application for the certificate;
- TPWD is required to cancel the certificate under these provisions or another provision of the Water Safety Act; or
- TPWD receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

Required Contents of Certificate of Title

H.B. 4895 revises the required contents of a certificate of title for vessels and outboard motors that must be on a form prescribed by TPWD as follows:

- clarifies that the address of an owner of a vessel or outboard motor is the owner's mailing address;
- if not all such owners' names and mailing addresses are listed, includes an indication that there are additional owners indicated in TPWD's files;
- includes the mailing address of an owner of a security interest in the vessel or outboard motor;
- if not all security interests are listed, includes an indication that there are additional security interests indicated in TPWD's files;
- includes as appropriate the vessel or outboard motor's hull identification number, motor number, outdrive number, make, year, length, vessel type, hull material, propulsion type, engine drive type, fuel type, and horsepower;
- includes the date the certificate of title was issued;
- includes all title brands indicated in TPWD's files covering the vessel, including brands indicated on a certificate issued by a governmental agency of another jurisdiction and delivered to TPWD; and
- includes a form for the owner of record to indicate, in connection with a transfer of ownership interest, that the vessel is hull damaged.

The bill establishes that the Water Safety Act does not preclude TPWD from noting on a certificate of title the name and mailing address of a secured party that is not a secured party of record.

H.B. 4895 requires a certificate of title, for each title brand indicated on the certificate, to identify the jurisdiction under whose law the title brand was designated or the jurisdiction that issued the certificate on which the title brand was designated. The bill sets out a state that may be included on the certificate if the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate and with language prescribed by the bill. The bill requires TPWD, if TPWD's files indicate that a vessel was previously registered or titled in a foreign country, to indicate on the certificate of title that the vessel was registered or titled in that country.

H.B. 4895 repeals the following provisions:

- the provision establishing that an owner identifier as prescribed by federal regulations relating to the contents of an application for a certificate of number is not a public record;
- the requirement for an original certificate of title, if there is no lien on the vessel or outboard motor, to be delivered to the owner and for TPWD to retain a copy; and
- the requirement for the original certificate of title, if there is a lien on the vessel or outboard motor, to be sent to the first lienholder and for TPWD to retain a copy.

Form of Manufacturer's and Importer's Certificate of Origin

H.B. 4895 specifies that content requirements relating to a manufacturer's or importer's certificate apply to a manufacturer's or importer's certificate of origin and that the prohibition against a lien, security interest, or other encumbrance being shown on a manufacturer's or importer's certificate applies to a manufacturer's or importer's certificate of origin.

Hull Damaged Title Brand

H.B. 4895 requires an owner of record, at or before the time the owner transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title issued by TPWD, 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, to do the following:

- deliver to TPWD an application for a new certificate of title that complies with applicable statutory provisions and includes the title brand "Hull Damaged"; or
- indicate on the certificate of title in the place designated for that purpose that the vessel is hull damaged and deliver the certificate to the transferee.

The bill requires an insurer, before the insurer transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title issued by TPWD, to deliver to TPWD a compliant application for a new certificate of title which includes the title brand "Hull Damaged." The bill requires TPWD, not later than the 20th day after the date of delivery to TPWD of an application or a certificate of title under these provisions, to issue a new certificate of title that indicates that the vessel is title branded "Hull Damaged." The bill creates a Class B Parks and Wildlife Code misdemeanor offense for a person who intentionally or knowingly fails to comply with these provisions or who solicits or colludes in a failure to comply with these provisions. The bill creates a Class C Parks and Wildlife Code misdemeanor offense for a person who negligently fails to comply with these provisions.

Replacement Certificate of Title

H.B. 4895 replaces the requirement for TPWD to provide by regulation for the replacement of lost, mutilated, or stolen certificates with a requirement for TPWD to provide by regulation for the replacement of certificates of title.

Transfer of Interest or Ownership

H.B. 4895 specifies that, for purposes of the prohibition against a person selling, assigning, transferring, or otherwise disposing of an interest in a vessel or an outboard motor without taking certain actions, a manufacturer's or importer's certificate is a manufacturer's or importer's

certificate of origin. The bill requires the person in possession of a certificate of title, for a voluntary transfer and if the transferor does not have possession of the certificate, to facilitate the transferor's compliance with statutory provisions relating to transfers of vessels and outboard motors, except that a secured party does not have a duty to facilitate the transferor's compliance if the proposed transfer is prohibited by the security agreement. The bill changes the deadline by which the transferor is required to provide the requisite documents or evidence to TPWD or the transferee, as appropriate, in sufficient time to allow the transferee to register and obtain a certificate of title for the vessel or outboard motor from not later than the 45th day after the date of sale to not later than the 20th day after that date. The bill requires the transferor, if the certificate of title is an electronic certificate of title, to promptly sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee. The transferee has a right enforceable by specific performance to require that the transferor comply with certain requirements of statutory provisions relating to transfers of vessels and outboard motors.

Exceptions

H.B. 4895 excepts the following vessels from statutory provisions relating to certificates of title for vessels and outboard motors:

- a foreign-documented vessel;
- a barge; or
- a vessel before delivery if the vessel is under construction or completed under contract.

Records Relating to Certificates of Title

H.B. 4895 requires TPWD, for each record relating to a certificate of title submitted to TPWD, to maintain a file that includes the following:

- the hull identification number of the vessel or the serial number of the outboard motor;
- all the information submitted with the application under applicable statutory provisions, including the date and time the application was submitted to TPWD;
- the name of each secured party to the vessel or outboard motor; and
- the name of each person known to TPWD to be claiming an ownership interest in the vessel or outboard motor.

The bill requires TPWD, in addition to this information, to maintain a list of all title brands known to TPWD and stolen-property reports relating to vessels or outboard motors made known to TPWD. The bill requires TPWD to maintain the required information in a manner that is searchable by hull identification number of the vessel, the motor number, the vessel number, and the name of the owner of record. The bill authorizes TPWD to maintain that information in a manner that is searchable by other methods.

H.B. 4895 requires TPWD to provide the required information to federal, state, and local governmental entities, on request of the governmental entities and for the purposes of safety, security, or law enforcement. The bill requires TPWD to retain the evidence used to establish the accuracy of the information in its files relating to the ownership of a vessel or outboard motor and the information on the certificate of title in accordance with the record retention schedule established under TPWD's records management program. The bill requires TPWD to retain in its files all information regarding a security interest in a vessel or outboard motor for at least 10 years after TPWD receives a termination statement regarding the security interest and requires that information to be accessible by the hull identification number of the vessel or serial number of the outboard motor and any other methods provided by TPWD.

H.B. 4895 requires TPWD, if a person submits a record to TPWD, or submits information that is accepted by TPWD, and requests an acknowledgment of the filing or submission, to send to the person an acknowledgment showing the hull identification number of the vessel or serial number of the outboard motor 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. The bill requires such a request to contain the hull identification number of the vessel and serial number of the outboard motor and be delivered by means authorized by TPWD.

Effect of Certificate of Title on Information in Certificate

H.B. 4895 establishes that a certificate of title is prima facie evidence of the accuracy of the information in the record that constitutes the certificate.

Effect of Possession on Certificate of Title

H.B. 4895 establishes the following:

- possession of a certificate of title does not provide a right to obtain possession of a vessel or outboard motor;
- garnishment, attachment, levy, replevin, or other judicial process against the certificate is not effective to determine possessory rights to the vessel or outboard motor;
- the Water Safety Act does not prohibit enforcement under state law of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vessel or outboard motor; and
- absence of an indication of a statutory or common-law lien on a certificate of title does not invalidate the lien.

Perfection of Security Interest

H.B. 4895 limits the perfection of a security interest in a vessel or outboard motor to the delivery to TPWD of an application for a certificate of title that identifies the secured party and otherwise complies with statutory provisions relating to the form of a certificate of title. The bill establishes the following:

- the security interest is perfected on the later of delivery to TPWD of the application and the applicable fee or attachment of the security interest under applicable Business & Commerce Code provisions;
- if the interest of a person named as owner, lessor, consignor, or bailor in an application for a certificate of title delivered to TPWD is a security interest, the application sufficiently identifies the person as a secured party; and
- identification on the application for a certificate of title of a person as owner, lessor, consignor, or bailor is not by itself a factor in determining whether the person's interest is a security interest.

H.B. 4895 authorizes a security interest in a vessel or outboard motor, if TPWD has issued a certificate of title for the vessel or outboard motor, to be perfected by delivery to TPWD of an application, on a form prescribed by TPWD, to have the security interest added to the certificate of title. The bill requires the application to be signed by an owner of the vessel or outboard motor or by the secured party and to include the following:

- the name of the owner of record;
- the name and mailing address of the secured party;
- the hull identification number of the vessel and serial number of the outboard motor, as applicable; and
- the certificate of title, if TPWD has issued a written certificate of title for the vessel or outboard motor.

The bill establishes that such a security interest is perfected on the later of delivery to TPWD of the application and all applicable fees or attachment of the security interest under applicable Business & Commerce Code provisions. The bill requires TPWD, on delivery of an application that complies with these provisions and payment of all applicable fees, to issue a new certificate of title under the bill's provisions and deliver the new certificate of title or a record evidencing an electronic certificate of title as required by those provisions. The bill requires TPWD to maintain in TPWD's files the date and time of delivery of the application to TPWD.

H.B. 4895 establishes that, if a secured party assigns a perfected security interest in a vessel or outboard motor, the receipt by TPWD 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. The bill establishes that a purchaser of a vessel or outboard motor subject to a security interest who obtains a release from the secured party indicated in TPWD's files or on the certificate of title takes free of the security interest and of the rights of a transferee unless the transfer is indicated in TPWD's files or on the certificate of title.

H.B. 4895 establishes that its provisions relating to the perfection of a security interest expressly do not apply to the following:

- a security interest issued for a vessel or outboard motor by a person during any period in which the vessel or outboard motor 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 or outboard motors;
- a security interest in a barge for which no application for a certificate of title has been delivered to TPWD; or
- a security interest in a vessel or outboard motor before delivery if the vessel or outboard motor is under construction or completed under contract and for which no application for a certificate of title has been delivered to TPWD.

The bill establishes that, if a certificate of documentation for a documented vessel is deleted or canceled, a security interest in the vessel that was valid immediately before deletion or cancellation against a third party as a result of compliance with federal law is and remains perfected until the earlier of four months after deletion or cancellation of the certificate of documentation or the perfection of the security interest under the bill's provisions.

H.B. 4895 establishes the following:

- a security interest in a vessel or outboard motor arising under certain Business & Commerce Code provisions is perfected when it attaches but becomes unperfected when the debtor obtains possession of the vessel or outboard motor, unless before the debtor obtains possession the security interest is otherwise perfected under the bill's provisions;
- a security interest in a vessel or outboard motor as proceeds of other collateral is perfected to the extent provided in Business & Commerce Code provisions relating to a secured party's rights on disposition of collateral and in proceeds; and
- a security interest in a vessel or outboard motor perfected under the law of another jurisdiction remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the vessel or outboard motor not become covered by a certificate of title perfected as such, except as otherwise provided.

Termination Statement

H.B. 4895 requires a secured party indicated in TPWD's files as having a security interest in a vessel or outboard motor to deliver a termination statement to TPWD and, on the debtor's request, to the debtor, not later than the earlier of the following:

- the 20th day after the date the secured party receives a signed demand from an owner for a termination statement and there is no obligation secured by the vessel or outboard motor subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel or outboard motor; or
- if the vessel or outboard motor is used or bought for use primarily for personal, family, or household purposes, the 30th day after the date that no obligation is secured by the vessel or outboard motor and no commitment exists to make an advance, incur an obligation, or otherwise give value secured by the vessel or outboard motor.

The bill requires a secured party, if a written certificate of title has been issued and delivered to the secured party and a termination statement is required under these provisions, to deliver the certificate of title, not later than the date required by these provisions, to the debtor or to TPWD

with the statement. The bill requires the secured party, if the certificate of title is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, to deliver with the statement, not later than the date required, an application for a replacement certificate of title meeting the requirements prescribed in the regulations adopted under statutory provisions relating to replacement certificates of title. The bill establishes that, on delivery to TPWD of a termination statement authorized by the secured party, and, if applicable, an application for a replacement certificate of title, the security interest to which the statement relates ceases to be perfected. The bill requires TPWD, if the security interest to which the statement relates was indicated on the certificate of title, to issue a new certificate of title and deliver the new certificate of title or a record evidencing an electronic certificate of title. The bill requires TPWD to maintain in its files the date and time of delivery to TPWD of the termination statement. The bill makes a secured party that fails to comply with these provisions liable for any loss that the secured party had reason to know might result from the secured party's failure to comply and which could not reasonably have been prevented, and for the cost of an application for a certificate of title or a replacement certificate of title.

Effect of Missing or Incorrect Information

H.B. 4895 establishes that, except as otherwise provided by Business & Commerce Code provisions relating to the priority of security interests in goods covered by a certificate of title, a certificate of title or other record required or authorized by the Water Safety Act is effective, regardless of whether it contains incorrect information or does not contain required information.

Transfer of Ownership by Secured Party's Transfer Statement

H.B. 4895 requires TPWD, unless TPWD rejects a secured party's transfer statement for a reason stated in the bill's provisions, not later than the 20th day after the date of delivery to TPWD of the statement and payment of fees due under the Water Safety Act and taxes payable under Tax Code provisions relating to taxes on sales and use of boats and boat motors, in connection with the statement or the acquisition or use of the vessel or outboard motor, to do the following:

- accept the statement;
- amend TPWD's files to reflect the transfer; and
- if the name of the owner whose ownership interest is being transferred is indicated on the certificate of title, do the following:
 - cancel the certificate of title, regardless of whether the certificate of title has been delivered to TPWD;
 - issue a new certificate of title indicating the transferee as owner; and
 - deliver the new certificate of title or a record evidencing an electronic certificate of title.

The bill establishes that the submission to TPWD of a secured party's transfer statement, or the issuance of a certificate of title under these provisions, is not a disposition of the vessel or outboard motor and does not relieve the secured party of the secured party's duties under Business & Commerce Code provisions relating to secured transactions.

H.B. 4895 defines "secured party's transfer statement" for purposes of these provisions as a record signed by the secured party of record stating the following:

- there has been a default on an obligation secured by the vessel or outboard motor;
- the secured party of record is exercising or has exercised post-default remedies with respect to the vessel or outboard motor;
- 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;
- the name and last known mailing address of the owner of record and the secured party of record;
- the name of the transferee;
- other information which an application form for a certificate of title is required to contain; and

- one of the following:
 - that the certificate of title is an electronic certificate of title;
 - that the secured party does not have possession of the written certificate of title issued in the name of the owner of record; or
 - that the secured party is delivering the written certificate of title to TPWD with the secured party's transfer statement.

Transfer by Operation of Law

H.B. 4895 requires a transfer-by-law statement to contain the following:

- the name and last known mailing address of the owner of record and the transferee and the other required information for a certificate of title application form;
- documentation sufficient to establish the transferee's ownership interest or right to acquire the ownership interest;
- a statement that:
 - the certificate of title is an electronic certificate of title;
 - the transferee does not have possession of the written certificate of title issued in the name of the owner of record; or
 - the transferee is delivering the written certificate of title to TPWD with the transfer-by-law statement; and
- except for a transfer because of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy, evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in TPWD's files as having an interest, including a security interest, in the vessel or outboard motor.

H.B. 4895 defines the following terms for purposes of these provisions:

- "by operation of law" as, with respect to a vessel or outboard motor, in accordance with a law or judicial order affecting ownership of the vessel or outboard motor, the following:
 - because of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;
 - through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or
 - through other legal process; and
- "transfer-by-law statement" as 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 or outboard motor.

H.B. 4895 requires TPWD, unless TPWD rejects a transfer-by-law statement for a reason stated in the bill's provisions or because the statement does not include documentation satisfactory to TPWD as to the transferee's ownership interest or right to acquire the ownership interest, not later than the 20th day after the date of delivery to TPWD of the statement and payment of fees due under the Water Safety Act and taxes payable under Tax Code provisions relating to taxes on sales and use of boats and boat motors, in connection with the statement or with the acquisition or use of the vessel or outboard motor, to do the following:

- accept the statement;
- amend TPWD's files to reflect the transfer; and
- if the name of the owner whose ownership interest is being transferred is indicated on the certificate of title, do the following:
 - cancel the certificate of title, regardless of whether the certificate of title has been delivered to TPWD;
 - issue a new certificate of title indicating the transferee as owner;
 - indicate on the new certificate of title any security interest indicated on the canceled certificate of title, unless a court order provides otherwise; and

- deliver the new certificate of title or a record evidencing an electronic certificate of title.

The bill establishes that its provisions relating to a transfer by operation of law expressly do not apply to a transfer of an interest in a vessel or outboard motor by a secured party under Business & Commerce Code provisions relating to default.

Application for Termination of Security Interest Without Certificate of Title

H.B. 4895 authorizes TPWD, except as provided by the bill's provisions relating to a transfer of ownership by a secured party's transfer statement or a transfer by operation of law, if TPWD receives, unaccompanied by a signed certificate of title, an application for a new certificate of title that includes an indication of a termination statement, to issue a new certificate of title under the bill's provisions relating to an application for the termination of a security interest without a certificate of title only if the following conditions are met:

- all other requirements under provisions relating to the application, form and content, and fee for a certificate of title and the bill's provisions relating to the issuance, rejection, and cancellation of a certificate of title are met;
- the applicant provides an affidavit stating facts showing the applicant is entitled to a termination statement;
- the applicant provides TPWD with satisfactory evidence that notification of the application has been sent to all persons indicated in TPWD's files as having a security interest in the vessel or outboard motor, not earlier than the 45th day after the date the notification was sent, and TPWD has not received an objection from any of those persons; and
- the applicant submits any other information required by TPWD as evidence of the applicant's right to terminate the security interest, and TPWD has no credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel or outboard motor.

The bill authorizes TPWD to indicate in a certificate of title issued under these provisions that the certificate of title was issued without submission of a termination statement. The bill requires TPWD, unless credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel or outboard motor is delivered to TPWD not later than the first anniversary of the date of the issuance of the certificate of title, on request in a form and manner required by TPWD, to remove the indication from the certificate of title.

H.B. 4895 authorizes TPWD, unless TPWD determines that the value of a vessel or outboard motor is less than \$5,000, to require the applicant to post a bond or provide an equivalent source of indemnity or security before TPWD issues a certificate of title under the bill's provisions relating to an application for the termination of a security interest without a certificate of title. The bill caps the bond, indemnity, or other security at twice the value of the vessel or outboard motor as determined by TPWD. The bill requires the bond, indemnity, or other security to be in a form required by TPWD 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 issuance or amendment of the certificate of title. The bill requires TPWD, unless TPWD receives a claim for indemnity not later than the first anniversary of the date of the issuance of a certificate of title under these provisions, on request in a form and manner required by TPWD, to release any bond, indemnity, or other security.

Rights of Purchaser Other Than Secured Party

H.B. 4895 defines "buyer in ordinary course of business" by reference to general definitions of the Business & Commerce Code and establishes that a buyer in ordinary course of business has the protections afforded by certain Business & Commerce Code provisions relating to entrusting of possession of goods to a merchant and buyers of goods, regardless of whether an existing

certificate of title was signed and delivered to the buyer or a new certificate of title listing the buyer as owner of record was issued. The bill establishes that, except as provided by provisions relating to transfers of vessels and outboard motors and the bill's provisions relating to the rights of a secured party, the rights of a purchaser of a vessel or outboard motor that is not a buyer in ordinary course of business or a lien creditor are governed by the Business & Commerce Code.

Rights of Secured Party

H.B. 4895 establishes that 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 the Business & Commerce Code. The bill establishes the following with respect to a circumstance in which, while a security interest in a vessel or outboard motor is perfected by any method under the Water Safety Act, TPWD issues a certificate of title that does not indicate that the vessel or outboard motor is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate of title:

- a buyer of the vessel or outboard motor, other than a person in the business of selling or leasing vessels or outboard motors 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 or outboard motor; and
- the security interest is subordinate to a conflicting security interest in the vessel or outboard motor that is perfected under the bill's provisions, after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

The bill defines "good faith" as honesty in fact and the observance of reasonable commercial standards of fair dealing.

Procedural Provisions

H.B. 4895 establishes that the rights, duties, and interests flowing from a transaction, certificate of title, or record relating to a vessel or outboard motor which was validly entered into or issued before the bill's effective date and would be subject to the Water Safety Act, as amended by the bill's provisions, if it had been entered into or issued on or after the bill's effective date, remain valid on and after that date. The bill expressly does not affect an action or proceeding commenced before the bill's effective date. The bill establishes that a security interest that is enforceable immediately before the bill's effective date and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under the bill's provisions. However, a security interest perfected immediately before the bill's effective date remains perfected until the earlier of the time perfection would have ceased under the law under which the security interest was perfected or three years after the bill's effective date. The bill's provisions do not affect the priority of a security interest in a vessel or outboard motor if immediately before the bill's effective date the security interest is enforceable and perfected, and that priority is established.

Repealed Provisions

H.B. 4895 repeals the following provisions of the Parks and Wildlife Code:

- Section 31.039(c); and
- Sections 31.049(b) and (c).

EFFECTIVE DATE

January 1, 2028.