
A BILL FOR AN ACT

RELATING TO THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT**

6 § -1 **Short title.** This chapter may be cited as the
7 Uniform Certificate of Title for Vessels Act.

8 § -2 **Definitions.** (a) As used in this chapter:

9 "Barge" means a vessel that is not self propelled or fitted
10 for propulsion by sail, paddle, oar, or similar device.

11 "Builder's certificate" means a certificate of the facts of
12 build of a vessel described in title 46 Code of Federal
13 Regulations section 67.99, as amended.

14 "Buyer" means a person that buys or contracts to buy a
15 vessel.

16 "Cancel", with respect to a certificate of title, means to
17 make the certificate ineffective.



1 "Certificate of origin" means a record created by a
2 manufacturer or importer as the manufacturer's or importer's
3 proof of identity of a vessel. The term includes a
4 manufacturer's certificate or statement of origin and an
5 importer's certificate or statement of origin. The term does
6 not include a builder's certificate.

7 "Certificate of title" means a record, created by the
8 department under this chapter or by a governmental agency of
9 another jurisdiction under the law of that jurisdiction, that is
10 designated as a certificate of title by the department or agency
11 and is evidence of ownership of a vessel.

12 "Dealer" means a person, including a manufacturer, in the
13 business of selling vessels.

14 "Department" means the department of land and natural
15 resources.

16 "Documented vessel" means a vessel covered by a certificate
17 of documentation issued pursuant to title 46 United States Code
18 section 12105, as amended. The term does not include a foreign-
19 documented vessel.



1 "Electronic" means relating to technology having
2 electrical, digital, magnetic, wireless, optical,
3 electromagnetic, or similar capabilities.

4 "Electronic certificate of title" means a certificate of
5 title consisting of information that is stored solely in an
6 electronic medium and is retrievable in perceivable form.

7 "Foreign-documented vessel" means a vessel the ownership of
8 which is recorded in a registry maintained by a country other
9 than the United States which identifies each person that has an
10 ownership interest in a vessel and includes a unique
11 alphanumeric designation for the vessel.

12 "Good faith" means honesty in fact and the observance of
13 reasonable commercial standards of fair dealing.

14 "Hull damaged" means compromised with respect to the
15 integrity of a vessel's hull by a collision, allision, lightning
16 strike, fire, explosion, running aground, or similar occurrence,
17 or the sinking of a vessel in a manner that creates a
18 significant risk to the integrity of the vessel's hull.

19 "Hull identification number" means the alphanumeric
20 designation assigned to a vessel pursuant to title 33 Code of
21 Federal Regulations part 181, as amended.



"Lien creditor", with respect to a vessel, means:

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

(2) An assignee for benefit of creditors from the time of assignment;

(3) A trustee in bankruptcy from the date of the filing of the petition; or

(4) A receiver in equity from the time of appointment.

"Owner" means a person that has legal title to a vessel.

"Owner of record" means the owner indicated in the files of the department or, if the files indicate more than one owner, the one first indicated.

"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.

"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.

"Purchaser" means a person that takes by purchase.



1 "Record" means information that is inscribed on a tangible
2 medium or that is stored in an electronic or other medium and is
3 retrievable in perceivable form.

4 "Secured party", with respect to a vessel, means a person:

- 5 (1) In whose favor a security interest is created or
6 provided for under a security agreement, whether or
7 not any obligation to be secured is outstanding;
8 (2) That is a consignor under chapter 490, article 9; or
9 (3) That holds a security interest arising under section
10 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508.

11 "Secured party of record" means the secured party whose
12 name is indicated as the name of the secured party in the files
13 of the department or, if the files indicate more than one
14 secured party, the one first indicated.

15 "Security interest" means an interest in a vessel which
16 secures payment or performance of an obligation if the interest
17 is created by contract or arises under section 490:2-401, 490:2-
18 505, 490:2-711(3), or 490:2A-508(5). The term includes any
19 interest of a consignor in a vessel in a transaction that is
20 subject to chapter 490, article 9. The term does not include
21 the special property interest of a buyer of a vessel on



1 identification of that vessel to a contract for sale under
2 section 490:2-501, but a buyer also may acquire a security
3 interest by complying with chapter 490, article 9. Except as
4 otherwise provided in section 490:2-505, the right of a seller
5 or lessor of a vessel under chapter 490, article 2 or 2A to
6 retain or acquire possession of the vessel is not a security
7 interest, but a seller or lessor also may acquire a security
8 interest by complying with chapter 490, article 9. The
9 retention or reservation of title by a seller of a vessel
10 notwithstanding shipment or delivery to the buyer under section
11 490:2-401 is limited in effect to a reservation of a security
12 interest. Whether a transaction in the form of a lease creates
13 a security interest is determined by section 490:1-203.

14 "Sign" means, with present intent to authenticate or adopt
15 a record, to:

- 16 (1) Make or adopt a tangible symbol; or
17 (2) Attach to or logically associate with the record an
18 electronic symbol, sound, or process.

19 "State" means a state of the United States, the District of
20 Columbia, Puerto Rico, the United States Virgin Islands, or any



1 territory or insular possession subject to the jurisdiction of
2 the United States.

3 "State of principal use" means the state on whose waters a
4 vessel is or will be used, operated, navigated, or employed more
5 than on the waters of any other state during a calendar year.

6 "Title brand" means a designation of previous damage, use,
7 or condition that must be indicated on a certificate of title.

8 "Transfer of ownership" means a voluntary or involuntary
9 conveyance of an interest in a vessel.

10 "Vessel" means any watercraft used or capable of being used
11 as a means of transportation on water, except:

12 (1) An amphibious vehicle for which a certificate of title
13 is issued pursuant to chapter 286, part III or a
14 similar statute of another state;

15 (2) A watercraft less than eight feet in length and
16 propelled solely by sail, paddle, oar, or an engine of
17 less than ten horsepower;

18 (3) A watercraft that operates only on a permanently
19 fixed, manufactured course and the movement of which
20 is restricted to or guided by means of a mechanical



1 device to which the watercraft is attached or by which
2 the watercraft is controlled;

3 (4) A stationary floating structure that:

4 (A) Does not have and is not designed to have a mode
5 of propulsion of its own;

6 (B) Is dependent for utilities upon a continuous
7 utility hookup to a source originating on shore;
8 and

9 (C) Has a permanent, continuous hookup to a shoreside
10 sewage system;

11 (5) A watercraft owned by the United States, a state, or a
12 foreign government or a political subdivision of any
13 of them; and

14 (6) A watercraft used solely as a lifeboat on another
15 watercraft.

16 "Vessel number" means the alphanumeric designation for a
17 vessel issued pursuant to title 46 United States Code section
18 12301, as amended.

19 "Written certificate of title" means a certificate of title
20 consisting of information inscribed on a tangible medium.



1 (b) The following definitions and terms also apply to this
2 chapter:

3 "Agreement", as distinguished from "contract", means the
4 bargain of the parties in fact, as found in their language or
5 inferred from other circumstances, including course of
6 performance, course of dealing, or usage of trade as provided in
7 section 490:1-303.

8 "Buyer in ordinary course of business" means a person that
9 buys goods in good faith, without knowledge that the sale
10 violates the rights of another person in the goods, and in the
11 ordinary course from a person, other than a pawnbroker, in the
12 business of selling goods of that kind. A person buys goods in
13 the ordinary course if the sale to the person comports with the
14 usual or customary practices in the kind of business in which
15 the seller is engaged or with the seller's own usual or
16 customary practices. A person that sells oil, gas, or other
17 minerals at the wellhead or minehead is a person in the business
18 of selling goods of that kind. A buyer in ordinary course of
19 business may buy for cash, by exchange of other property, or on
20 secured or unsecured credit, and may acquire goods or documents
21 of title under a preexisting contract for sale. Only a buyer



1 that takes possession of the goods or has a right to recover the
2 goods from the seller under article 2 may be a buyer in ordinary
3 course of business. "Buyer in the ordinary course of business"
4 does not include a person that acquires goods in a transfer in
5 bulk or as security for or in total or partial satisfaction of a
6 money debt.

7 "Conspicuous", with reference to a term, means so written,
8 displayed, or presented that a reasonable person against which
9 it is to operate ought to have noticed it. Whether a term is
10 "conspicuous" or not is a decision for the court. Conspicuous
11 terms include the following:

12 (1) A heading in capitals equal to or greater in size than
13 the surrounding text, or in contrasting type, font, or
14 color to the surrounding text of the same or lesser
15 size; and

16 (2) Language in the body of a record or display in larger
17 type than the surrounding text, or in contrasting
18 type, font, or color to the surrounding text of the
19 same size, or set off from surrounding text of the
20 same size by symbols or other marks that call
21 attention to the language.



1 "Consumer goods" means goods that are used or bought for
2 use primarily for personal, family, or household purposes.

3 "Debtor" means:

4 (1) A person having an interest, other than a security
5 interest or other lien, in the collateral, whether or
6 not the person is an obligor;

7 (2) A seller of accounts, chattel paper, payment
8 intangibles, or promissory notes; or

9 (3) A consignee.

10 "Knowledge" means actual knowledge.

11 "Lease" means a transfer of the right to possession and use
12 of goods for a term in return for consideration, but a sale,
13 including a sale on approval or a sale or return, or retention
14 or creation of a security interest is not a lease. Unless the
15 context clearly indicates otherwise, the term includes a
16 sublease.

17 "Lessor" means a person who transfers the right to
18 possession and use of goods under a lease. Unless the context
19 clearly indicates otherwise, the term includes a sublessor.

20 "Notice" shall have the same meaning as that term is
21 defined in section 490:1-202.



1 "Representative" means a person empowered to act for
2 another, including an agent, an officer of a corporation or
3 association, and a trustee, executor, or administrator of an
4 estate.

5 "Sale" shall have the same meaning as that term is defined
6 in section 490:2-106(1).

7 "Security agreement" means an agreement that creates or
8 provides for a security interest.

9 "Seller" means a person who sells or contracts to sell
10 goods.

11 "Send" in connection with a writing, record, or notice
12 means:

13 (1) To deposit in the mail or deliver for transmission by
14 any other usual means of communication with postage or
15 cost of transmission provided for and properly
16 addressed and, in the case of an instrument, to an
17 address specified thereon or otherwise agreed, or if
18 there be none to any address reasonable under the
19 circumstances; or



1 (2) In any other way to cause to be received any record or
2 notice within the time it would have arrived if
3 properly sent.

4 "Value" shall have the same meaning as that term is defined
5 in section 490:1-204.

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

9 § -3 **Applicability.** Subject to section -28, this
10 chapter applies to any transaction, certificate of title, or
11 record relating to a vessel, even if the transaction,
12 certificate of title, or record was entered into or created
13 before the effective date of this chapter.

14 § -4 **Supplemental principles of law and equity.** Unless
15 displaced by a provision of this chapter, the principles of law
16 and equity supplement its provisions.

17 § -5 **Law governing vessel covered by certificate of**
18 **title.** (a) The local law of the jurisdiction under whose
19 certificate of title a vessel is covered governs all issues
20 relating to the certificate from the time the vessel becomes
21 covered by the certificate until the vessel becomes covered by



1 another certificate or becomes a documented vessel, even if no
2 other relationship exists between the jurisdiction and the
3 vessel or its owner.

4 (b) A vessel becomes covered by a certificate of title
5 when an application for the certificate and the applicable fee
6 are delivered to the department in accordance with this chapter
7 or to the governmental agency that creates a certificate in
8 another jurisdiction in accordance with the law of that
9 jurisdiction.

10 § -6 Certificate of title required. (a) Except as
11 otherwise provided in subsections (b) and (c), the owner of a
12 vessel for which this State is the state of principal use shall
13 deliver to the department an application for a certificate of
14 title for the vessel, with the applicable fee, not later than
15 twenty days after the later of:

16 (1) The date of a transfer of ownership; or

17 (2) The date this State becomes the state of principal
18 use.

19 (b) An application for a certificate of title is not
20 required for:

21 (1) A documented vessel;



1 (2) A foreign-documented vessel;

2 (3) A barge;

3 (4) A vessel before delivery if the vessel is under
4 construction or completed pursuant to contract; or

5 (5) A vessel held by a dealer for sale or lease.

6 (c) The department may not issue, transfer, or renew a
7 certificate of number for a vessel issued pursuant to the
8 requirements of title 46 United States Code section 12301, as
9 amended, unless the department has created a certificate of
10 title for the vessel or an application for a certificate for the
11 vessel and the applicable fee have been delivered to the
12 department.

13 § -7 Application for certificate of title. (a) Except
14 as otherwise provided in sections -10, -15, -19,
15 -20, -21, and -22, only an owner may apply for a
16 certificate of title.

17 (b) An application for a certificate of title must be
18 signed by the applicant and contain:

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



- 1 (2) The name and mailing address of each other owner of
- 2 the vessel;
- 3 (3) The hull identification number for the vessel or, if
- 4 none, an application for the issuance of a hull
- 5 identification number for the vessel;
- 6 (4) The vessel number for the vessel or, if none issued by
- 7 the department, an application for a vessel number;
- 8 (5) A description of the vessel as required by the
- 9 department, which must include:
- 10 (A) The official number for the vessel, if any,
- 11 assigned by the United States Coast Guard or the
- 12 vessel registration number assigned by
- 13 department;
- 14 (B) The name of the manufacturer, builder, or maker;
- 15 (C) The model year or the year in which the
- 16 manufacture or build of the vessel was completed;
- 17 (D) The overall length of the vessel;
- 18 (E) The vessel type;
- 19 (F) The hull material;
- 20 (G) The propulsion type;
- 21 (H) The engine drive type, if any; and



- 1 (I) The fuel type, if any;
- 2 (6) An indication of all security interests in the vessel
- 3 known to the applicant and the name and mailing
- 4 address of each secured party;
- 5 (7) A statement that the vessel is not a documented
- 6 vessel, a foreign-documented vessel, or a barge;
- 7 (8) Any title brand known to the applicant and, if known,
- 8 the jurisdiction under whose law the title brand was
- 9 created;
- 10 (9) If the applicant knows that the vessel is hull
- 11 damaged, a statement that the vessel is hull damaged;
- 12 (10) If the application is made in connection with a
- 13 transfer of ownership, the transferor's name, street
- 14 address, and, if different, mailing address, the sales
- 15 price, if any, and the date of the transfer; and
- 16 (11) If the vessel previously was registered or titled in
- 17 another jurisdiction, a statement identifying each
- 18 jurisdiction known to the applicant in which the
- 19 vessel was registered or titled.
- 20 (c) In addition to the information required by subsection
- 21 (b), an application for a certificate of title may contain an



1 electronic communication address of the owner, transferor, or
2 secured party.

3 (d) Except as otherwise provided in section -19,
4 -20, -21, or -22, an application for a certificate of
5 title must be accompanied by:

6 (1) A certificate of title signed by the owner shown on
7 the certificate and which:

8 (A) Identifies the applicant as the owner of the
9 vessel; or

10 (B) Is accompanied by a record that identifies the
11 applicant as the owner; or

12 (2) If there is no certificate of title:

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

17 (B) If the vessel was a foreign-documented vessel, a
18 record issued by the foreign country which shows
19 the vessel is no longer a foreign-documented
20 vessel and identifies the applicant as the owner;
21 or



1 (C) In all other cases, a certificate of origin, bill
2 of sale, or other record that to the satisfaction
3 of the department identifies the applicant as the
4 owner.

5 (3) Payment of any applicable titling fees, as set by the
6 department.

7 (e) A record submitted in connection with an application
8 is part of the application. The department shall maintain the
9 record in its files.

10 (f) The department may require that an application for a
11 certificate of title be accompanied by payment or evidence of
12 payment of all fees and taxes payable by the applicant under law
13 of this State other than this chapter in connection with the
14 application or the acquisition or use of the vessel.

15 **§ -8 Creation and cancellation of certificate of title.**

16 (a) Unless an application for a certificate of title is
17 rejected under subsection (c) or (d), the department shall
18 create a certificate for the vessel in accordance with
19 subsection (b) not later than sixty days after delivery to it of
20 an application that complies with section -7.



1 (b) If the department creates electronic certificates of
2 title, the department shall create an electronic certificate
3 unless in the application the secured party of record or, if
4 none, the owner of record, requests that the department create a
5 written certificate.

6 (c) Except as otherwise provided in subsection (d), the
7 department may reject an application for a certificate of title
8 only if:

9 (1) The application does not comply with section -7;

10 (2) The application does not contain documentation
11 sufficient for the department to determine whether the
12 applicant is entitled to a certificate;

13 (3) There is a reasonable basis for concluding that the
14 application is fraudulent or issuance of a certificate
15 would facilitate a fraudulent or illegal act; or

16 (4) The application does not comply with the law of this
17 State other than this chapter.

18 (d) The department shall reject an application for a
19 certificate of title for a vessel that is a documented vessel or
20 a foreign-documented vessel.



1 (e) The department may cancel a certificate of title
2 created by it only if the department:

3 (1) Could have rejected the application for the
4 certificate under subsection (c);

5 (2) Is required to cancel the certificate under another
6 provision of this chapter; or

7 (3) Receives satisfactory evidence that the vessel is a
8 documented vessel or a foreign-documented vessel.

9 § -9 Content of certificate of title. (a) A
10 certificate of title must contain:

11 (1) The date the certificate was created;

12 (2) The name of the owner of record and, if not all owners
13 are listed, an indication that there are additional
14 owners indicated in the files of the department;

15 (3) The mailing address of the owner of record;

16 (4) The hull identification number;

17 (5) The information listed in section -7(b)(6);

18 (6) Except as otherwise provided in section -15(b), the
19 name and mailing address of the secured party of
20 record, if any, and if not all secured parties are
21 listed, an indication that there are other security



1 interests indicated in the files of the department;

2 and

3 (7) All title brands indicated in the files of the
4 department covering the vessel, including brands
5 indicated on a certificate created by a governmental
6 agency of another jurisdiction and delivered to the
7 department.

8 (b) This chapter does not preclude the department from
9 noting on a certificate of title the name and mailing address of
10 a secured party that is not a secured party of record.

11 (c) For each title brand indicated on a certificate of
12 title, the certificate must identify the jurisdiction under
13 whose law the title brand was created or the jurisdiction that
14 created the certificate on which the title brand was indicated.
15 If the meaning of a title brand is not easily ascertainable or
16 cannot be accommodated on the certificate, the certificate may
17 state: "Previously branded in (insert the jurisdiction under
18 whose law the title brand was created or whose certificate of
19 title previously indicated the title brand)".

20 (d) If the files of the department indicate that a vessel
21 previously was registered or titled in a foreign country, the



1 department shall indicate on the certificate of title that the
2 vessel was registered or titled in that country.

3 (e) A written certificate of title must contain a form
4 that all owners indicated on the certificate may sign to
5 evidence consent to a transfer of an ownership interest to
6 another person. The form must include a certification, signed
7 under penalty of unsworn falsification to authorities, pursuant
8 to section 710-1063, that the statements made are true and
9 correct to the best of each owner's knowledge, information, and
10 belief.

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

14 § -10 Title brand. (a) Unless subsection (c) applies,
15 at or before the time the owner of record transfers an ownership
16 interest in a hull-damaged vessel that is covered by a
17 certificate of title created by the department, if the damage
18 occurred while that person was an owner of the vessel and the
19 person has notice of the damage at the time of the transfer, the
20 owner shall:



(1) Deliver to the department 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 twenty days after delivery to the department of the application under subsection (a)(1) or the certificate of title under subsection (a)(2), the department 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 department, the insurer shall deliver to the department an application for a new certificate that complies with section -6 and includes the title brand designation "Hull Damaged". Not later than twenty days after delivery of the application to the department, the department 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 an administrative penalty of \$1,000.

§ -11 Maintenance of and access to files. (a) For each record relating to a certificate of title submitted to the department, the department 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 -7(b) to which the record relates, including the date and time the record was delivered to the department;

(3) Maintain the files for public inspection subject to subsection (e); and

(4) Index the files of the department as required by subsection (b).

(b) The department shall maintain in its files the information contained in all certificates of title created under



1 this chapter. The information in the files of the department
2 must be searchable by the hull identification number of the
3 vessel, the vessel number, the name of the owner of record, and
4 any other method used by the department.

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

11 (d) Upon request, for safety, security, or law-enforcement
12 purposes, the department shall provide to federal, state, or
13 local government the information in its files relating to any
14 vessel for which the department has issued a certificate of
15 title.

16 (e) Except as otherwise provided by the law of this State
17 other than this chapter, the information required under section
18 -9 is a government record.

19 § -12 Action required on creation of certificate of
20 title. (a) On creation of a written certificate of title, the
21 department promptly shall send the certificate to the secured



1 party of record or, if none, to the owner of record, at the
2 address indicated for that person in the files of the
3 department. On creation of an electronic certificate of title,
4 the department promptly shall send a record evidencing the
5 certificate to the owner of record and, if there is one, to the
6 secured party of record, at the address indicated for that
7 person in the files of the department. The department may send
8 the record to the person's mailing address or, if indicated in
9 the files of the department, an electronic address.

10 (b) If the department creates a written certificate of
11 title, any electronic certificate of title for the vessel is
12 canceled and replaced by the written certificate. The
13 department shall maintain in the files of the department the
14 date and time of cancellation.

15 (c) Before the department creates an electronic
16 certificate of title, any written certificate for the vessel
17 must be surrendered to the department. If the department
18 creates an electronic certificate, the department shall destroy
19 or otherwise cancel the written certificate for the vessel which
20 has been surrendered to the department and maintain in the files
21 of the department the date and time of destruction or other



1 cancellation. If a written certificate being canceled is not
2 destroyed, the department shall indicate on the face of the
3 certificate that it has been canceled.

4 **§ -13 Effect of certificate of title.** A certificate of
5 title is prima facie evidence of the accuracy of the information
6 in the record that constitutes the certificate.

7 **§ -14 Effect of possession of certificate of title;**
8 **judicial process.** Possession of a certificate of title does not
9 by itself provide a right to obtain possession of a vessel.

10 Garnishment, attachment, levy, replevin, or other judicial
11 process against the certificate is not effective to determine
12 possessory rights to the vessel. This chapter does not prohibit
13 enforcement under law of this State other than this chapter of a
14 security interest in, levy on, or foreclosure of a statutory or
15 common-law lien on a vessel. Absence of an indication of a
16 statutory or common-law lien on a certificate does not
17 invalidate the lien.

18 **§ -15 Perfection of security interest.** (a) Except as
19 otherwise provided in this section or section -28, a security
20 interest in a vessel may be perfected only by delivery to the



1 department of an application for a certificate of title that
2 identifies the secured party and otherwise complies with
3 section -7. The security interest is perfected on the later
4 of delivery to the department of the application and the
5 applicable fee or attachment of the security interest under
6 section 490:9-203.

7 (b) If the interest of a person named as owner, lessor,
8 consignor, or bailor in an application for a certificate of
9 title delivered to the department is a security interest, the
10 application sufficiently identifies the person as a secured
11 party. Identification on the application for a certificate of a
12 person as owner, lessor, consignor, or bailor is not by itself a
13 factor in determining whether the person's interest is a
14 security interest.

15 (c) If the department has created a certificate of title
16 for a vessel, a security interest in the vessel may be perfected
17 by delivery to the department of an application, on a form the
18 department may require, to have the security interest added to
19 the certificate. The application must be signed by an owner of
20 the vessel or by the secured party and must include:

21 (1) The name of the owner of record;



1 (2) The name and mailing address of the secured party;

2 (3) The hull identification number for the vessel; and

3 (4) if the department has created a written certificate of
4 title for the vessel, the certificate.

5 (d) A security interest perfected under subsection (c) is
6 perfected on the later of delivery to the department of the
7 application and all applicable fees or attachment of the
8 security interest under section 490:9-203.

9 (e) On delivery of an application that complies with
10 subsection (c) and payment of all applicable fees, the
11 department shall create a new certificate of title pursuant to
12 section -8 and deliver the new certificate or a record
13 evidencing an electronic certificate pursuant to
14 section -12(a). The department shall maintain in the files
15 of the department the date and time of delivery of the
16 application to the department.

17 (f) If a secured party assigns a perfected security
18 interest in a vessel, the receipt by the department of a
19 statement providing the name of the assignee as secured party is
20 not required to continue the perfected status of the security
21 interest against creditors of and transferees from the original



1 debtor. A purchaser of a vessel subject to a security interest
2 which obtains a release from the secured party indicated in the
3 files of the department or on the certificate takes free of the
4 security interest and of the rights of a transferee unless the
5 transfer is indicated in the files of the department or on the
6 certificate.

7 (g) This section does not apply to a security interest:

8 (1) Created in a vessel by a person during any period in
9 which the vessel is inventory held for sale or lease
10 by the person or is leased by the person as lessor if
11 the person is in the business of selling vessels;

12 (2) In a barge for which no application for a certificate
13 of title has been delivered to the department; or

14 (3) In a vessel before delivery if the vessel is under
15 construction, or completed, pursuant to contract and
16 for which no application for a certificate has been
17 delivered to the department.

18 (h) This subsection applies if a certificate of
19 documentation for a documented vessel is deleted or canceled.
20 If a security interest in the vessel was valid immediately
21 before deletion or cancellation against a third party as a



1 result of compliance with title 46 United States Code section
2 31321, as amended, the security interest is and remains
3 perfected until the earlier of four months after cancellation of
4 the certificate or the time the security interest becomes
5 perfected under this chapter.

6 (i) A security interest in a vessel arising under section
7 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508 is perfected
8 when it attaches but becomes unperfected when the debtor obtains
9 possession of the vessel, unless before the debtor obtains
10 possession the security interest is perfected pursuant to
11 subsection (a) or (c).

12 (j) A security interest in a vessel as proceeds of other
13 collateral is perfected to the extent provided in section 490:9-
14 315.

15 (k) A security interest in a vessel perfected under the
16 law of another jurisdiction is perfected to the extent provided
17 in section 490:9-316(d).

18 § -16 Termination statement. (a) A secured party
19 indicated in the files of the department as having a security
20 interest in a vessel shall deliver a termination statement to



1 the department and, on the debtor's request, to the debtor, by
2 the earlier of:

3 (1) Twenty days after the secured party receives a signed
4 demand from an owner for a termination statement and
5 there is no obligation secured by the vessel subject
6 to the security interest and no commitment to make an
7 advance, incur an obligation, or otherwise give value
8 secured by the vessel; or

9 (2) If the vessel is consumer goods, thirty days after
10 there is no obligation secured by the vessel and no
11 commitment to make an advance, incur an obligation, or
12 otherwise give value secured by the vessel.

13 (b) If a written certificate of title has been created and
14 delivered to a secured party and a termination statement is
15 required under subsection (a), the secured party, not later than
16 the date required by subsection (a), shall deliver the
17 certificate to the debtor or to the department with the
18 statement. If the certificate is lost, stolen, mutilated,
19 destroyed, or is otherwise unavailable or illegible, the secured
20 party shall deliver with the statement, not later than the date



1 required by subsection (a), an application for a replacement
2 certificate meeting the requirements of section -22.

3 (c) On delivery to the department of a termination
4 statement authorized by the secured party, the security interest
5 to which the statement relates ceases to be perfected. If the
6 security interest to which the statement relates was indicated
7 on the certificate of title, the department shall create a new
8 certificate and deliver the new certificate or a record
9 evidencing an electronic certificate. The department shall
10 maintain in its files the date and time of delivery to the
11 department of the statement.

12 (d) A secured party that fails to comply with this section
13 is liable for any loss that the secured party had reason to know
14 might result from its failure to comply and which could not
15 reasonably have been prevented and for the cost of an
16 application for a certificate of title under section -7 or
17 -22.

18 § -17 **Transfer of ownership.** (a) On voluntary transfer
19 of an ownership interest in a vessel covered by a certificate of
20 title, the following rules apply:



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

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

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

19 (b) The creation of a certificate of title identifying the
20 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, -23(a), 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.

§ -18 Effect of missing or incorrect information.

Except as otherwise provided in section 490:9-337, a certificate of title or other record required or authorized by this chapter is effective even if it contains incorrect information or does not contain required information.

§ -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 (1) That there has been a default on an obligation secured
- 2 by the vessel;
- 3 (2) The secured party of record is exercising or has
- 4 exercised post-default remedies with respect to the
- 5 vessel;
- 6 (3) By reason of the exercise, the secured party of record
- 7 has the right to transfer the ownership interest of an
- 8 owner, and the name of the owner;
- 9 (4) The name and last-known mailing address of the owner
- 10 of record and the secured party of record;
- 11 (5) The name of the transferee;
- 12 (6) Other information required by section -7(b); and
- 13 (7) One of the following:
- 14 (A) The certificate of title is an electronic
- 15 certificate;
- 16 (B) The secured party does not have possession of the
- 17 written certificate of title created in the name
- 18 of the owner of record; or
- 19 (C) The secured party is delivering the written
- 20 certificate of title to the department with the
- 21 secured party's transfer statement.



(b) Unless the department rejects a secured party's transfer statement for a reason stated in section -8(c), not later than twenty days after delivery to the department of the statement and payment of fees and taxes payable under the law of this State other than this chapter in connection with the statement or the acquisition or use of the vessel, the department shall:

(1) Accept the statement;

(2) Amend the files of the department 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 department;

(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 transfer statement under subsection (a) or the creation of a certificate of title under subsection (b) is not



1 by itself a disposition of the vessel and does not by itself
2 relieve the secured party of its duties under chapter 490,
3 article 9.

4 § -20 Transfer by operation of law. (a) As used in
5 this section:

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

8 (A) Because of death, divorce, or other family law
9 proceeding, merger, consolidation, dissolution,
10 or bankruptcy;

11 (B) Through the exercise of the rights of a lien
12 creditor or a person having a lien created by
13 statute or rule of law; or

14 (C) Through other legal process; and

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

19 (b) A transfer-by-law statement must contain:



- 1 (1) The name and last known mailing address of the owner
2 of record and the transferee and the other information
3 required by section -7(b);
- 4 (2) Documentation sufficient to establish the transferee's
5 ownership interest or right to acquire the ownership
6 interest;
- 7 (3) A statement that:
- 8 (A) The certificate of title is an electronic
9 certificate of title;
- 10 (B) The transferee does not have possession of the
11 written certificate of title created in the name
12 of the owner of record; or
- 13 (C) The transferee is delivering the written
14 certificate to the department with the transfer-
15 by-law statement; and
- 16 (4) Except for a transfer described in subsection
17 (a) (1) (A), evidence that notification of the transfer
18 and the intent to file the transfer-by-law statement
19 has been sent to all persons indicated in the files of
20 the department as having an interest, including a
21 security interest, in the vessel.



(c) Unless the department rejects a transfer-by-law statement for a reason stated in section -8(c) or because the statement does not include documentation satisfactory to the department as to the transferee's ownership interest or right to acquire the ownership interest, not later than twenty days after delivery to the department of the statement and payment of fees and taxes payable under the law of this State other than this chapter in connection with the statement or with the acquisition or use of the vessel, the department shall:

(1) Accept the statement;

(2) Amend the files of the department 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 department;

(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 chapter 490, article 9, part 6.

§ -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 department 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 department 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;



1 (3) The applicant provides the department with
2 satisfactory evidence that notification of the
3 application has been sent to the owner of record and
4 all persons indicated in the files of the department
5 as having an interest, including a security interest,
6 in the vessel, at least forty-five days have passed
7 since the notification was sent, and the department
8 has not received an objection from any of those
9 persons; and

10 (4) The applicant submits any other information required
11 by the department as evidence of the applicant's
12 ownership or right to terminate the security interest,
13 and the department has no credible information
14 indicating theft, fraud, or an undisclosed or
15 unsatisfied security interest, lien, or other claim to
16 an interest in the vessel.

17 (b) The department may indicate in a certificate of title
18 created under subsection (a) that the certificate was created
19 without submission of a signed certificate or termination
20 statement. Unless credible information indicating theft, fraud,
21 or an undisclosed or unsatisfied security interest, lien, or



1 other claim to an interest in the vessel is delivered to the
2 department not later than one year after creation of the
3 certificate, on request in a form and manner required by the
4 department, the department shall remove the indication from the
5 certificate.

6 § -22 Replacement certificate of title. (a) If a
7 written certificate of title is lost, stolen, mutilated,
8 destroyed, or otherwise becomes unavailable or illegible, the
9 secured party of record or, if no secured party is indicated in
10 the files of the department, the owner of record may apply for
11 and, by furnishing information satisfactory to the department,
12 obtain a replacement certificate in the name of the owner of
13 record.

14 (b) An applicant for a replacement certificate of title
15 must sign the application, and, except as otherwise permitted by
16 the department, the application must comply with section -7.
17 The application must include the existing certificate unless the
18 certificate is lost, stolen, mutilated, destroyed, or otherwise
19 unavailable.



(c) A replacement certificate of title created by the department 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) The department may set and charge fees for a replacement certificate of title.

§ -23 Rights of purchaser other than secured party. (a)

A buyer in ordinary course of business has the protections afforded by sections 490:2-403(2) and 490:9-320(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 chapter 490.

§ -24 Rights of secured party. (a) Subject to

subsection (b), the effect of perfection and nonperfection of a



1 security interest and the priority of a perfected or unperfected
2 security interest with respect to the rights of a purchaser or
3 creditor, including a lien creditor, is governed by chapter 490.

4 (b) If, while a security interest in a vessel is perfected
5 by any method under this chapter, the department creates a
6 certificate of title that does not indicate that the vessel is
7 subject to the security interest or contain a statement that it
8 may be subject to security interests not indicated on the
9 certificate:

10 (1) A buyer of the vessel, other than a person in the
11 business of selling or leasing vessels of that kind,
12 takes free of the security interest if the buyer,
13 acting in good faith and without knowledge of the
14 security interest, gives value and receives possession
15 of the vessel; and

16 (2) The security interest is subordinate to a conflicting
17 security interest in the vessel that is perfected
18 under section -15 after creation of the certificate
19 and without the conflicting secured party's knowledge
20 of the security interest.



1 § -25 Duties and operation of department. (a) The
2 department shall retain the evidence used to establish the
3 accuracy of the information in its files relating to the current
4 ownership of a vessel and the information on the certificate of
5 title.

6 (b) The department shall retain in its files all
7 information regarding a security interest in a vessel for at
8 least ten years after the department receives a termination
9 statement regarding the security interest. The information must
10 be accessible by the hull identification number for the vessel
11 and any other methods provided by the department.

12 (c) If a person submits a record to the department, or
13 submits information that is accepted by the department, and
14 requests an acknowledgment of the filing or submission, the
15 department shall send to the person an acknowledgment showing
16 the hull identification number of the vessel to which the record
17 or submission relates, the information in the filed record or
18 submission, and the date and time the record was received or the
19 submission accepted. A request under this section must contain
20 the hull identification number and be delivered by means
21 authorized by the department.



1 (d) The department shall send or otherwise make available
2 in a record the following information to any person that
3 requests it and pays the applicable fee:

4 (1) Whether the files of the department indicate, as of a
5 date and time specified by the department, but not a
6 date earlier than three days before the department
7 received the request, any certificate of title,
8 security interest, termination statement, or title
9 brand that relates to a vessel:

10 (A) Identified by a hull identification number
11 designated in the request;

12 (B) Identified by a vessel number designated in the
13 request; or

14 (C) Owned by a person designated in the request;

15 (2) With respect to the vessel:

16 (A) The name and address of any owner as indicated in
17 the files of the department or on the certificate
18 of title;

19 (B) The name and address of any secured party as
20 indicated in the files of the department or on



1 the certificate, and the effective date of the
2 information; and

3 (C) A copy of any termination statement indicated in
4 the files of the department and the effective
5 date of the termination statement; and

6 (D) A copy of any certificate of origin, secured
7 party transfer statement, transfer by law
8 statement under section -20, and other
9 evidence of previous or current transfers of
10 ownership.

11 (e) In responding to a request under this section, the
12 department may provide the requested information in any medium.
13 On request, the department shall send the requested information
14 in a record that is self-authenticating under rule 902 of the
15 Hawaii Evidence Code, chapter 626.

16 § -26 Uniformity of application and construction. In
17 applying and construing this uniform act, consideration must be
18 given to the need to promote uniformity of the law with respect
19 to its subject matter among states that enact it.

20 § -27 Relation to electronic signatures in global and
21 national commerce act. This chapter modifies, limits, and



1 supersedes the federal Electronic Signatures in Global and
2 National Commerce Act (15 U.S.C. 7001 et seq.) but does not
3 modify, limit, or supersede section 101(c) of the Electronic
4 Signatures in Global and National Commerce Act (15 U.S.C.
5 7001(c)), or authorize electronic delivery of any of the notices
6 described in section 103(b) of the Electronic Signatures in
7 Global and National Commerce Act (15 U.S.C. 7003(b)).

8 § -28 **Savings clause.** (a) The rights, duties, and
9 interests flowing from a transaction, certificate of title, or
10 record relating to a vessel which was validly entered into or
11 created before the effective date of this chapter and would be
12 subject to this chapter if it had been entered into or created
13 on or after the effective date of this chapter, remain valid on
14 and after the effective date of this chapter.

15 (b) This chapter does not affect an action or proceeding
16 commenced before the effective date of this chapter.

17 (c) Except as otherwise provided in subsection (d), a
18 security interest that is enforceable immediately before the
19 effective date of this chapter and would have priority over the
20 rights of a person that becomes a lien creditor at that time is
21 a perfected security interest under this chapter.



(d) A security interest perfected immediately before the effective date of this chapter remains perfected until the earlier of:

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

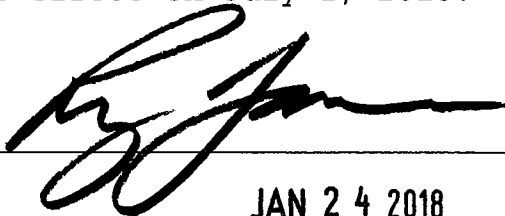
(2) Three years after the effective date of this chapter.

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

§ -29 Rules. The department may adopt rules in accordance with chapter 91 to effectuate this chapter."

SECTION 2. This Act shall take effect on July 1, 2018.

INTRODUCED BY:



JAN 24 2018



H.B. NO. 2596

Report Title:

Uniform Certificate of Title for Vessels Act; Vessel Titling

Description:

Requires certain vessel owners to apply for a certificate of title within twenty days of becoming an owner or within twenty days of establishing principal use of the vessel in waters of the State. Establishes the information required in an application for a certificate of title; process for a transfer of vessel ownership and title; rights of a secured party; and rights of a purchaser other than a secured party

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