

JAN 24 2018

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# 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 unless  
9 the context otherwise requires:

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

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

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



1 "Cancel", with respect to a certificate of title, means to  
2 make the certificate ineffective.

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

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

14 "Dealer" means a person, including a manufacturer, in the  
15 business of selling vessels.

16 "Department" means the department of land and natural  
17 resources.

18 "Documented vessel" means a vessel covered by a certificate  
19 of documentation issued pursuant to title 46 United States Code  
20 section 12105, as amended. "Documented vessel" does not include  
21 a foreign 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 that 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.



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

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

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

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

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

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

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

13 "Person" means an individual, corporation, business trust,  
14 estate, trust, statutory trust, partnership, limited liability  
15 company, association, joint venture, public corporation,  
16 government or governmental subdivision, agency, or  
17 instrumentality, or any other legal or commercial entity.

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

21 "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  
3 is 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, regardless of  
7 whether any obligation to be secured is outstanding;  
8 (2) That is a consignor under article 9 of chapter 490; 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(e).

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

15 "Security interest" means an interest in a vessel that  
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(e). The term includes any  
19 interest of a consignor in a vessel in a transaction that is  
20 subject to article 9 of chapter 490. 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 article 9 of chapter 490. Except as  
4 otherwise provided in section 490:2-505, the right of a seller  
5 or lessor of a vessel under article 2 or 2A of chapter 490 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 article 9 of chapter 490. 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 shall be 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 shall 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 part III of chapter 286 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, a  
12 foreign government, or a political subdivision of the  
13 United States, a state, or a foreign government; 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  
18 section 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" shall have the same meaning as in section  
4 490:1-201(b).

5 "Buyer in ordinary course of business" shall have the same  
6 meaning as in section 490:1-201(b).

7 "Conspicuous" shall have the same meaning as in section  
8 490:1-201(b).

9 "Consumer goods" shall have the same meaning as in section  
10 490:9-102(a).

11 "Debtor" shall have the same meaning as in section 490:9-  
12 102(a).

13 "Knowledge" shall have the same meaning as in section  
14 490:1-202(b).

15 "Lease" shall have the same meaning as in section 490:2A-  
16 103(a)(10).

17 "Lessor" shall have the same meaning as in section 490:2A-  
18 103(a)(16).

19 "Notice" shall have the same meaning as in section 490:1-  
20 202.



1 "Representative" shall have the same meaning as in section  
2 490:1-201(b).

3 "Sale" shall have the same meaning as in section 490:2-  
4 106(1).

5 "Security agreement" shall have the same meaning as in  
6 section 490:9-102(a).

7 "Seller" shall have the same meaning as in section 490:2-  
8 103(1)(d).

9 "Send" shall have the same meaning as in section 490:1-  
10 201(b).

11 "Value" shall have the same meaning as in section 490:1-  
12 204.

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

16 **§ -3 Applicability.** Pursuant to section -28, this  
17 chapter applies to any transaction, certificate of title, or  
18 record relating to a vessel, even if the transaction,  
19 certificate of title, or record was entered into or created  
20 before the effective date of this chapter.



1           §   -4   Supplemental principles of law and equity. Unless  
2 displaced by any provision of this chapter, the principles of  
3 law and equity shall supplement its provisions.

4           §   -5   Law governing vessel covered by certificate of  
5 title. (a) The local law of the jurisdiction under whose  
6 certificate of title for a vessel is covered governs all issues  
7 relating to the certificate from the time the vessel becomes  
8 covered by the certificate until the vessel becomes covered by  
9 another certificate or becomes a documented vessel, even if no  
10 other relationship exists between the jurisdiction and the  
11 vessel or its owner.

12           (b) A vessel becomes covered by a certificate of title  
13 when an application for the certificate and the applicable fee  
14 are delivered to the department in accordance with this chapter  
15 or to the governmental agency that creates a certificate in  
16 another jurisdiction in accordance with the law of that  
17 jurisdiction.

18           §   -6   Certificate of title covered. (a) Except as  
19 otherwise provided in subsections (b) and (c), the owner of a  
20 vessel for which this State is the state of principal use shall  
21 deliver to the department an application for a certificate of



1 title for the vessel, with the applicable fee, no later than  
2 twenty days after the later of:

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

4 (2) The date this State becomes the state of principal  
5 use.

6 (b) An application for a certificate of title is not  
7 required for:

8 (1) A documented vessel;

9 (2) A foreign documented vessel;

10 (3) A barge;

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

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

14 (c) The department shall not issue, transfer, or renew a  
15 certificate of title for a vessel issued pursuant to the  
16 requirements of title 46 United States Code section 12301, as  
17 amended, unless the department has created a certificate of  
18 title for the vessel or an application for a certificate for the  
19 vessel and the applicable fee has been delivered to the  
20 department.



1       §   -7   Application for certificate of title. (a) Except  
2 as otherwise provided in sections       -10,       -15,       -19,  
3       -20,       -21, and       -22, only an owner may apply for a  
4 certificate of title.

5       (b) An application for a certificate of title shall be  
6 signed by the applicant and contain:

- 7       (1) The applicant's name, the street address of the  
8           applicant's principal residence, and, if different,  
9           the applicant's mailing address;
- 10       (2) The name and mailing address of each other owner of  
11           the vessel;
- 12       (3) The hull identification number for the vessel or, if  
13           none, an application for the issuance of a hull  
14           identification number for the vessel;
- 15       (4) The vessel number for the vessel or, if none is issued  
16           by the department, an application for a vessel number;
- 17       (5) A description of the vessel as required by the  
18           department, which shall include:
- 19           (A) The official number for the vessel, if any,  
20               assigned by the United States Coast Guard or the



- 1 vessel registration number assigned by  
2 department;
- 3 (B) The name of the manufacturer, builder, or maker;  
4 (C) The model year or the year in which the  
5 manufacture or build of the vessel was completed;  
6 (D) The overall length of the vessel;  
7 (E) The vessel type;  
8 (F) The hull material;  
9 (G) The propulsion type;  
10 (H) The engine drive type, if any; and  
11 (I) The fuel type, if any;
- 12 (6) An indication of all security interests in the vessel  
13 known to the applicant and the name and mailing  
14 address of each secured party;
- 15 (7) A statement that the vessel is not a documented  
16 vessel, a foreign documented vessel, or a barge;
- 17 (8) Any title brand known to the applicant and, if known,  
18 the jurisdiction under whose law the title brand was  
19 created;
- 20 (9) If the applicant knows that the vessel is hull  
21 damaged, a statement that the vessel is hull damaged;



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

(11) If the vessel previously was registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered or titled.

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

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

(1) A certificate of title signed by the owner shown on the certificate and that:

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

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



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

2                   (A) If the vessel was a documented vessel, a record  
3                               issued by the United States Coast Guard that  
4                               shows the vessel is no longer a documented vessel  
5                               and identifies the applicant as the owner;

6                   (B) If the vessel was a foreign documented vessel, a  
7                               record issued by the foreign country that shows  
8                               the vessel is no longer a foreign documented  
9                               vessel and identifies the applicant as the owner;  
10                              or

11                  (C) In all other cases, a certificate of origin, bill  
12                               of sale, or other record that identifies the  
13                               applicant as the owner to the satisfaction of the  
14                               department.

15 The application shall also be accompanied by payment of any  
16 applicable titling fees, as set by the department.

17           (e) A record submitted in connection with an application  
18 shall be deemed part of the application. The department shall  
19 maintain the record in its files.

20           (f) The department may require that an application for a  
21 certificate of title be accompanied by payment or evidence of





1 payment of all fees and taxes payable by the applicant under law  
2 of this State other than this chapter in connection with the  
3 application or the acquisition or use of the vessel.

4       §   -8   Creation and cancellation of certificate of title.

5   (a) Unless an application for a certificate of title is  
6 rejected under subsection (c) or (d), the department shall  
7 create a certificate for the vessel in accordance with  
8 subsection (b) no later than sixty days after delivery to it of  
9 an application that complies with section   -7.

10       (b) If the department creates electronic certificates of  
11 title, the department shall create an electronic certificate  
12 unless in the application the secured party of record or, if  
13 none, the owner of record, requests that the department create a  
14 written certificate.

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

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

19       (2) The application does not contain documentation  
20           sufficient for the department to determine whether the  
21           applicant is entitled to a certificate;



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

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

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

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

(1) Could have rejected the application for the certificate pursuant to subsection (c);

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

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

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

(1) The date the certificate was created;



1           (2) The name of the owner of record and, if not all owners  
2           are listed, an indication that there are additional  
3           owners indicated in the department's files;

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

5           (4) The hull identification number;

6           (5) The information regarding security interests listed in  
7           section     -7(b)(6);

8           (6) Except as otherwise provided in section     -15(b), the  
9           name and mailing address of the secured party of  
10          record, if any, and if not all secured parties are  
11          listed, an indication that there are other security  
12          interests indicated in the department's files; and

13          (7) All title brands indicated in the department's files  
14          covering the vessel, including brands indicated on a  
15          certificate created by a governmental agency of  
16          another jurisdiction and delivered to the department.

17          (b) This chapter shall not preclude the department from  
18          noting on a certificate of title the name and mailing address of  
19          a secured party that is not a secured party of record.

20          (c) For each title brand indicated on a certificate of  
21          title, the certificate shall identify the jurisdiction under



1 whose law the title brand was created or the jurisdiction that  
2 created the certificate on which the title brand was indicated.  
3 If the meaning of a title brand is not easily ascertainable or  
4 cannot be accommodated on the certificate, the certificate may  
5 state: "Previously branded in (insert the jurisdiction under  
6 whose law the title brand was created or whose certificate of  
7 title previously indicated the title brand)".

8 (d) If the department's files indicate that a vessel was  
9 previously registered or titled in a foreign country, the  
10 department shall indicate on the certificate of title that the  
11 vessel was registered or titled in that country.

12 (e) A written certificate of title shall contain a form  
13 that all owners indicated on the certificate may sign to  
14 evidence consent to a transfer of an ownership interest to  
15 another person. The form shall include a certification, signed  
16 under penalty of unsworn falsification to authorities pursuant  
17 to section 710-1063, that the statements made are true and  
18 correct to the best of each owner's knowledge, information, and  
19 belief.

20 (f) A written certificate of title shall contain a form  
21 for the owner of record to indicate, in connection with a



1 transfer of an ownership interest, that the vessel is hull  
2 damaged.

3       §   -10 Title brand. (a) Unless subsection (c) applies,  
4 at or before the time the owner of record transfers an ownership  
5 interest in a hull damaged vessel that is covered by a  
6 certificate of title created by the department, the owner shall:

7       (1) Deliver to the department an application for a new  
8       certificate that complies with section   -7 and  
9       include the title brand designation "Hull Damaged"; or  
10       (2) Indicate on the certificate in the place designated  
11       for that purpose that the vessel is hull damaged and  
12       deliver the certificate to the transferee,  
13 if the damage occurred while that person was an owner of the  
14 vessel and the person has notice of the damage at the time of  
15 the transfer.

16       (b) No later than twenty days after delivery to the  
17 department of the application under subsection (a)(1) or the  
18 certificate of title under subsection (a)(2), the department  
19 shall create a new certificate that indicates that the vessel is  
20 branded "Hull Damaged".



1 (c) Before an insurer transfers an ownership interest in a  
2 hull damaged vessel that is covered by a certificate of title  
3 created by the department, the insurer shall deliver to the  
4 department an application for a new certificate that complies  
5 with section -7 and includes the title brand designation  
6 "Hull Damaged". No later than twenty days after delivery of the  
7 application to the department, the department shall create a new  
8 certificate that indicates that the vessel is branded "Hull  
9 Damaged".

10 (d) An owner of record that fails to comply with  
11 subsection (a), a person that solicits or colludes in a failure  
12 by an owner of record to comply with subsection (a), or an  
13 insurer that fails to comply with subsection (c) shall be  
14 subject to an administrative penalty of \$1,000.

15 **§ -11 Maintenance of and access to files.** (a) For each  
16 record relating to a certificate of title submitted to the  
17 department, the department shall:

18 (1) Ascertain or assign the hull identification number for  
19 the vessel;

20 (2) Maintain the hull identification number and all the  
21 information submitted with the application pursuant to



1           section     -7(b) to which the record relates,  
2           including the date and time the record was delivered  
3           to the department;

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

6       (4)   Index the department's files as required by subsection  
7           (b) .

8       (b)   The department shall maintain in its files the  
9   information contained in all certificates of title created under  
10   this chapter. The information in the department's files shall  
11   be searchable by the hull identification number of the vessel,  
12   the vessel number, the name of the owner of record, and any  
13   other method used by the department.

14       (c)   The department shall maintain in its files, for each  
15   vessel for which it has created a certificate of title, all  
16   title brands known to the department, the name of each secured  
17   party known to the department, the name of each person known to  
18   the department to be claiming an ownership interest, and all  
19   stolen property reports the department has received.

20       (d)   Upon request, for safety, security, or law enforcement  
21   purposes, the department shall provide to federal, state, or



1 local government the information in its files relating to any  
2 vessel for which the department has issued a certificate of  
3 title.

4 (e) Except as otherwise provided by the law of this State  
5 other than this chapter, the information required under section  
6 -9 is a government record.

7 § -12 Action required on creation of certificate of  
8 title. (a) On creation of a written certificate of title, the  
9 department shall promptly send the certificate to the secured  
10 party of record or, if none, to the owner of record, at the  
11 address indicated for that person in the department's files. On  
12 creation of an electronic certificate of title, the department  
13 shall promptly send a record evidencing the certificate to the  
14 owner of record and, if there is one, to the secured party of  
15 record, at the address indicated for that person in the  
16 department's files. The department may send the record to the  
17 person's mailing address or, if indicated in its files, an  
18 electronic mail address.

19 (b) If the department creates a written certificate of  
20 title, any electronic certificate of title for the vessel is  
21 canceled and replaced by the written certificate. The





1 department shall maintain in its files the date and time of  
2 cancellation.

3 (c) Before the department creates an electronic  
4 certificate of title, any written certificate for the vessel  
5 shall be surrendered to the department. If the department  
6 creates an electronic certificate, the department shall destroy  
7 or otherwise cancel the written certificate for the vessel that  
8 has been surrendered to the department and maintain in its files  
9 the date and time of destruction or other cancellation. If a  
10 written certificate being canceled is not destroyed, the  
11 department shall indicate on the face of the certificate that it  
12 has been canceled.

13 § -13 Effect of certificate of title. A certificate of  
14 title is prima facie evidence of the accuracy of the information  
15 in the record that constitutes the certificate.

16 § -14 Effect of possession of certificate of title;  
17 judicial process. Possession of a certificate of title shall  
18 not by itself provide a right to obtain possession of a vessel.  
19 Garnishment, attachment, levy, replevin, or other judicial  
20 process against the certificate shall not be effective to  
21 determine possessory rights to the vessel. This chapter shall



1 not prohibit enforcement under law of this State other than this  
2 chapter of a security interest in, levy on, or foreclosure of a  
3 statutory or common law lien on a vessel. Absence of an  
4 indication of a statutory or common law lien on a certificate  
5 shall not invalidate the lien.

6       **§ -15 Perfection of security interest.** (a) Except as  
7 otherwise provided in this section or section -28, a security  
8 interest in a vessel may be perfected only by delivery to the  
9 department of an application for a certificate of title that  
10 identifies the secured party and otherwise complies with section

11       -7. The security interest is perfected on delivery to the  
12 department of the application and the applicable fee or  
13 attachment of the security interest under section 490:9-203,  
14 whichever occurs later.

15       (b) If the interest of a person named as owner, lessor,  
16 consignor, or bailor in an application for a certificate of  
17 title delivered to the department is a security interest, the  
18 application shall be deemed as sufficiently identifying the  
19 person as a secured party. Identification on the application  
20 for a certificate of a person as owner, lessor, consignor, or



1 bailor shall not be by itself a factor in determining whether  
2 the person's interest is a security interest.

3 (c) If the department has created a certificate of title  
4 for a vessel, a security interest in the vessel may be perfected  
5 by delivery to the department of an application, on a form the  
6 department may require, to have the security interest added to  
7 the certificate. The application shall be signed by an owner of  
8 the vessel or by the secured party and shall include:

- 9 (1) The name of the owner of record;  
10 (2) The name and mailing address of the secured party;  
11 (3) The hull identification number for the vessel; and  
12 (4) If the department has created a written certificate of  
13 title for the vessel, the certificate.

14 (d) A security interest perfected under subsection (c) is  
15 perfected on delivery to the department of the application and  
16 all applicable fees or attachment of the security interest under  
17 section 490:9-203, whichever occurs later.

18 (e) On delivery of an application that complies with  
19 subsection (c) and payment of all applicable fees, the  
20 department shall create a new certificate of title pursuant to  
21 section -8 and deliver the new certificate or a record



1 evidencing an electronic certificate pursuant to section  
2 -12(a). The department shall maintain in its files the date  
3 and time of delivery of the application to the department.

4 (f) If a secured party assigns a perfected security  
5 interest in a vessel, the receipt by the department of a  
6 statement providing the name of the assignee as secured party  
7 shall not be required to continue the perfected status of the  
8 security interest against creditors of and transferees from the  
9 original debtor. A purchaser of a vessel subject to a security  
10 interest that obtains a release from the secured party indicated  
11 in the department's files or on the certificate takes free of  
12 the security interest and of the rights of a transferee unless  
13 the transfer is indicated in the department's files or on the  
14 certificate.

15 (g) This section shall not apply to a security interest:

16 (1) Created in a vessel by a person during any period in  
17 which the vessel is inventory held for sale or lease  
18 by the person or is leased by the person as lessor if  
19 the person is in the business of selling vessels;

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



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

5           (h)   This subsection shall apply only if a certificate of  
6   documentation for a documented vessel is deleted or canceled.

7   If a security interest in the vessel was valid immediately  
8   before deletion or cancellation against a third party as a  
9   result of compliance with title 46 United States Code section  
10  31321, as amended, the security interest is and remains  
11  perfected until four months after cancellation of the  
12  certificate or the time the security interest becomes perfected  
13  under this chapter, whichever occurs earlier.

14          (i)   A security interest in a vessel arising under section  
15  490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e) is  
16  perfected when it attaches, but becomes unperfected when the  
17  debtor obtains possession of the vessel, unless before the  
18  debtor obtains possession the security interest is perfected  
19  pursuant to subsection (a) or (c).



1           (j) A security interest in a vessel as proceeds of other  
2 collateral is perfected to the extent provided in section 490:9-  
3 315.

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

7           § -16 Termination statement. (a) A secured party  
8 indicated in the department's files as having a security  
9 interest in a vessel shall deliver a termination statement to  
10 the department and, on the debtor's request, to the debtor, by  
11 the earlier of:

12           (1) Twenty days after the secured party receives a signed  
13 demand from an owner for a termination statement,  
14 there is no obligation secured by the vessel subject  
15 to the security interest, and no commitment to make an  
16 advance, incur an obligation, or otherwise give value  
17 secured by the vessel; or

18           (2) If the vessel holds consumer goods, thirty days after  
19 there is no obligation secured by the vessel and no  
20 commitment to make an advance, incur an obligation, or  
21 otherwise give value secured by the vessel.



1           (b) If a written certificate of title has been created and  
2 delivered to a secured party and a termination statement is  
3 required under subsection (a), the secured party, no later than  
4 the date required by subsection (a), shall deliver the  
5 certificate to the debtor or to the department with the  
6 statement. If the certificate is lost, stolen, mutilated,  
7 destroyed, or is otherwise unavailable or illegible, the secured  
8 party shall deliver with the statement, no later than the date  
9 required by subsection (a), an application for a replacement  
10 certificate in accordance with section -22.

11           (c) On delivery to the department of a termination  
12 statement authorized by the secured party, the security interest  
13 to which the statement relates ceases to be perfected. If the  
14 security interest to which the statement relates was indicated  
15 on the certificate of title, the department shall create a new  
16 certificate and deliver the new certificate or a record  
17 evidencing an electronic certificate. The department shall  
18 maintain in its files the date and time of delivery to the  
19 department of the statement.

20           (d) A secured party that fails to comply with this section  
21 is liable for any loss that the secured party had reason to know



1 may result from its failure to comply and could not reasonably  
2 have been prevented and for the cost of an application for a  
3 certificate of title under section -7 or -22.

4       **§ -17 Transfer of ownership.** (a) On voluntary transfer  
5 of an ownership interest in a vessel covered by a certificate of  
6 title, the following rules shall apply:

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

19       (2) If the certificate of title is an electronic  
20          certificate of title, the transferor promptly shall





1 sign and deliver to the transferee a record evidencing  
2 the transfer of ownership to the transferee; and

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

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

8 (c) A failure to comply with subsection (a) or to apply  
9 for a new certificate of title shall not render a transfer of  
10 ownership of a vessel ineffective between the parties. Except  
11 as otherwise provided in section -18, -19, -23(a), or  
12 -24, a transfer of ownership without compliance with  
13 subsection (a) shall not be effective against another person  
14 claiming an interest in the vessel.

15 (d) A transferor that complies with subsection (a) shall  
16 not be liable as owner of the vessel for an event occurring  
17 after the transfer, regardless of whether the transferee applies  
18 for a new certificate of title.

19 **§ -18 Effect of missing or incorrect information.**

20 Except as otherwise provided in section 490:9-337, a certificate  
21 of title or other record required or authorized by this chapter



1 shall be effective even if it contains incorrect information or  
2 does not contain required information.

3       **§ -19 Transfer of ownership by secured party's transfer**  
4 **statement.** (a) As used in this section, "secured party's  
5 transfer statement" means a record signed by the secured party  
6 of record stating:

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

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

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

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

17       (5) The name of the transferee;

18       (6) Other information required by section -7(b); and

19       (7) One of the following:

20           (A) The certificate of title is an electronic  
21 certificate;



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

4 (C) The secured party is delivering the written  
5 certificate of title to the department with the  
6 secured party's transfer statement.

7 (b) Unless the department rejects a secured party's  
8 transfer statement for a reason stated in section -8(c), no  
9 later than twenty days after delivery to the department of the  
10 statement and payment of fees and taxes payable under the law of  
11 this State other than this chapter in connection with the  
12 statement or the acquisition or use of the vessel, the  
13 department shall:

14 (1) Accept the statement;

15 (2) Amend the department's files to reflect the transfer;  
16 and

17 (3) If the name of the owner whose ownership interest is  
18 being transferred is indicated on the certificate of  
19 title:

20 (A) Cancel the certificate even if the certificate  
21 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 application under subsection (a) or the creation of a certificate of title under subsection (b) shall not be by itself a disposition of the vessel and shall not by itself relieve the secured party of its duties under article 9 of chapter 490.

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

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

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

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

(3) Through other legal process.



1 "Transfer by law statement" means a record signed by a  
2 transferee stating that by operation of law the transferee has  
3 acquired or has the right to acquire an ownership interest in a  
4 vessel.

5 (b) A transfer by law statement shall contain:

6 (1) The name and last known mailing address of the owner  
7 of record and the transferee and the other information  
8 required by section -7(b);

9 (2) Documentation sufficient to establish the transferee's  
10 ownership interest or right to acquire the ownership  
11 interest;

12 (3) A statement that:

13 (A) The certificate of title is an electronic  
14 certificate of title;

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

18 (C) The transferee is delivering the written  
19 certificate to the department with the transfer  
20 by law statement; and



1           (4) Except for a transfer by operation of law that affects  
2           the ownership of a vessel because of death, divorce,  
3           or other family law proceeding, merger, consolidation,  
4           dissolution, or bankruptcy, evidence that notification  
5           of the transfer and the intent to file the transfer by  
6           law statement has been sent to all persons indicated  
7           in the department's files as having an interest,  
8           including a security interest, in the vessel.

9           (c) Unless the department rejects a transfer by law  
10          statement for a reason stated in section     -8(c) or because the  
11          statement does not include documentation satisfactory to the  
12          department as to the transferee's ownership interest or right to  
13          acquire the ownership interest, no later than twenty days after  
14          delivery to the department of the statement and payment of fees  
15          and taxes payable under the law of this State other than this  
16          chapter in connection with the statement or with the acquisition  
17          or use of the vessel, the department shall:

18           (1) Accept the statement;

19           (2) Amend the department's files to reflect the transfer;

20           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 shall not apply to a transfer of an interest in a vessel by a secured party under part 6, article 9 of chapter 490.

**§ -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



1 termination statement, the department may create a new  
2 certificate under this section only if:

3 (1) All other requirements under sections -7 and -8  
4 are met;

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

8 (3) The applicant provides the department with  
9 satisfactory evidence that notification of the  
10 application has been sent to the owner of record and  
11 all persons indicated in the department's files as  
12 having an interest, including a security interest, in  
13 the vessel, at least forty-five days have passed since  
14 the notification was sent, and the department has not  
15 received an objection from any of those persons; and

16 (4) The applicant submits any other information required  
17 by the department as evidence of the applicant's  
18 ownership or right to terminate the security interest,  
19 and the department has no credible information  
20 indicating theft, fraud, or an undisclosed or





1           unsatisfied security interest, lien, or other claim to  
2           an interest in the vessel.

3           (b) The department may indicate in a certificate of title  
4           created under subsection (a) that the certificate was created  
5           without submission of a signed certificate or termination  
6           statement. Unless credible information indicating theft, fraud,  
7           or an undisclosed or unsatisfied security interest, lien, or  
8           other claim to an interest in the vessel is delivered to the  
9           department no later than one year after creation of the  
10          certificate, on request in a form and manner required by the  
11          department, the department shall remove the indication from the  
12          certificate.

13          §   -22   Replacement certificate of title. (a) If a  
14          written certificate of title is lost, stolen, mutilated,  
15          destroyed, or otherwise becomes unavailable or illegible, the  
16          secured party of record or, if no secured party is indicated in  
17          the department's files, the owner of record may apply for and,  
18          by furnishing information satisfactory to the department, obtain  
19          a replacement certificate in the name of the owner of record.

20          (b) An applicant for a replacement certificate of title  
21          shall sign the application, and, except as otherwise permitted



1 by the department, the application shall comply with section  
2 -7. The application shall include the existing certificate  
3 unless the certificate is lost, stolen, mutilated, destroyed, or  
4 otherwise unavailable.

5 (c) A replacement certificate of title created by the  
6 department shall comply with section -9 and indicate on the  
7 face of the certificate that it is a replacement certificate.

8 (d) If a person receiving a replacement certificate of  
9 title subsequently obtains possession of the original written  
10 certificate, the person shall promptly destroy the original  
11 certificate of title.

12 (e) The department may set and charge fees by rule in  
13 accordance with chapter 91 for a replacement certificate of  
14 title.

15 **§ -23 Rights of purchaser other than secured party. (a)**

16 A buyer in ordinary course of business has the protections  
17 afforded by sections 490:2-403(2) and 490:9-320(a) even if an  
18 existing certificate of title was not signed and delivered to  
19 the buyer or a new certificate listing the buyer as owner of  
20 record was not created.



1           (b) Except as otherwise provided in sections       -17 and  
2       -24, the rights of a purchaser of a vessel that is not a  
3   buyer in ordinary course of business or a lien creditor are  
4   governed by chapter 490.

5           §   -24   Rights of secured party.   (a) Subject to  
6   subsection (b), the effect of perfection and nonperfection of a  
7   security interest and the priority of a perfected or unperfected  
8   security interest with respect to the rights of a purchaser or  
9   creditor, including a lien creditor, shall be governed by  
10   chapter 490.

11          (b) If, while a security interest in a vessel is perfected  
12   by any method under this chapter, the department creates a  
13   certificate of title that does not indicate that the vessel is  
14   subject to the security interest or contain a statement that it  
15   may be subject to security interests not indicated on the  
16   certificate:

17          (1) A buyer of the vessel, other than a person in the  
18               business of selling or leasing vessels of that kind,  
19               takes free of the security interest if the buyer,  
20               acting in good faith and without knowledge of the



1 security interest, gives value and receives possession  
2 of the vessel; and

3 (2) The security interest is subordinate to a conflicting  
4 security interest in the vessel that is perfected  
5 under section -15 after creation of the certificate  
6 and without the conflicting secured party's knowledge  
7 of the security interest.

8 § -25 Duties and operation of department. (a) The  
9 department shall retain the evidence used to establish the  
10 accuracy of the information in its files relating to the current  
11 ownership of a vessel and the information on the certificate of  
12 title.

13 (b) The department shall retain in its files all  
14 information regarding a security interest in a vessel for at  
15 least ten years after the department receives a termination  
16 statement regarding the security interest. The information  
17 shall be accessible by the hull identification number for the  
18 vessel and any other methods provided by the department.

19 (c) If a person submits a record to the department, or  
20 submits information that is accepted by the department, and  
21 requests an acknowledgment of the filing or submission, the



1 department shall send to the person an acknowledgment showing  
2 the hull identification number of the vessel to which the record  
3 or submission relates, the information in the filed record or  
4 submission, and the date and time the record was received or the  
5 submission accepted. A request under this section shall contain  
6 the hull identification number and be delivered by means  
7 authorized by the department.

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

11 (1) Whether the department's files indicate, as of a date  
12 and time specified by the department, but not a date  
13 earlier than three days before the department received  
14 the request, any certificate of title, security  
15 interest, termination statement, or title brand that  
16 relates to a vessel:

17 (A) Identified by a hull identification number  
18 designated in the request;

19 (B) Identified by a vessel number designated in the  
20 request; or

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



(2) With respect to the vessel:

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

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

(C) A copy of any termination statement indicated in the department's files and the effective date of the termination statement; and

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

(e) In responding to a request under this section, the department may provide the requested information in any medium. On request, the department shall send the requested information in a record that is self-authenticating under section 626-1, rule 902.



1           §    -26   Uniformity of application and construction.  In  
2   applying and construing this uniform act, consideration shall be  
3   given to the need to promote uniformity of the law with respect  
4   to its subject matter among states that enact it.

5           §    -27   Relation to the Electronic Signatures in Global  
6   and National Commerce Act.  This chapter modifies, limits, and  
7   supersedes the federal Electronic Signatures in Global and  
8   National Commerce Act, title 15 United States Code section 7001,  
9   et seq., but does not modify, limit, or supersede section 101(c)  
10   of that Act, title 15 United States Code section 7001(c), or  
11   authorize electronic delivery of any of the notices described in  
12   section 103(b) of that Act, title 15 United States Code section  
13   7003(b).

14          §    -28   Savings clause.  (a)  The rights, duties, and  
15   interests flowing from a transaction, certificate of title, or  
16   record relating to a vessel that was validly entered into or  
17   created before the effective date of this chapter and would be  
18   subject to this chapter if it had been entered into or created  
19   on or after the effective date of this chapter, remain valid on  
20   and after the effective date of this chapter.



1           (b) This chapter shall not affect an action or proceeding  
2 commenced before the effective date of this chapter.

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

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

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

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

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

18           § -29 Rules. The department may adopt rules in  
19 accordance with chapter 91 to effectuate this chapter."  
20





# S.B. NO. 2974

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

2

INTRODUCED BY: Karl Rhoads



# S.B. NO. 2974

**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 what information is required to be included in an application for a certificate of title; how to deal with transfer of vessel ownership and title; rights of a secured party; and rights of a purchaser other than a secured party.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

