



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 20, 2018

GOV. MSG. NO. 1146

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 20, 2018, the following bill was signed into law:

HB2596 HD2 SD1

RELATING TO THE UNIFORM CERTIFICATE OF
TITLE FOR VESSELS ACT
ACT 046 (18)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

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. "Certificate of
8 origin" does 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 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, 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,
18 490:2-505, 490:2-711(3), or 490:2A-508(e). "Security interest"
19 includes any interest of a consignor in a vessel in a
20 transaction that is subject to article 9 of chapter 490.

21 "Security interest" does not include the special property



1 interest of a buyer of a vessel on identification of that vessel
2 to a contract for sale under section 490:2-501, but a buyer also
3 may acquire a security interest by complying with article 9 of
4 chapter 490. Except as otherwise provided in section 490:2-505,
5 the right of a seller or lessor of a vessel under article 2 or
6 2A of chapter 490 to retain or acquire possession of the vessel
7 is not a security interest, but a seller or lessor also may
8 acquire a security interest by complying with article 9 of
9 chapter 490. The retention or reservation of title by a seller
10 of a vessel notwithstanding shipment or delivery to the buyer
11 under section 490:2-401 is limited in effect to a reservation of
12 a security interest. Whether a transaction in the form of a
13 lease creates a security interest shall be determined by section
14 490:1-203.

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

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

20 "State" means a state of the United States, the District of
21 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 section
18 12301, as amended.

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



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

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

"Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents 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 "Consumer goods" means goods that are used or bought for
8 use primarily for personal, family, or household purposes.

9 "Debtor" means:

10 (1) A person having an interest, other than a security
11 interest or other lien, in the collateral, whether or
12 not the person is an obligor;

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

15 (3) A consignee.

16 "Knowledge" means actual knowledge.

17 "Lease" means a transfer of the right to possession and use
18 of goods for a term in return for consideration, but a sale,
19 including a sale on approval or a sale or return, or retention
20 or creation of a security interest is not a lease. Unless the



1 context clearly indicates otherwise, the term includes a
2 sublease.

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

6 "Notice" shall have the same meaning as in section
7 490:1-202.

8 "Sale" shall have the same meaning as in section
9 490:2-106(1).

10 "Security agreement" means an agreement that creates or
11 provides for a security interest.

12 "Seller" means a person who sells or contracts to sell
13 goods.

14 "Send" in connection with a writing, record, or notice
15 means:

16 (1) To deposit in the mail or deliver for transmission by
17 any other usual means of communication with postage or
18 cost of transmission provided for and properly
19 addressed and, in the case of an instrument, to an
20 address specified thereon or otherwise agreed, or if



1 there be none to any address reasonable under the
2 circumstances; or

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

6 "Value" shall have the same meaning as in section
7 490:1-204.

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

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

16 § -4 **Supplemental principles of law and equity.** Unless
17 displaced by any provision of this chapter, the principles of
18 law and equity shall supplement the provisions of this chapter.

19 § -5 **Law governing vessel covered by certificate of**
20 **title.** (a) The local law of the jurisdiction under whose
21 certificate of title a vessel is covered governs all issues



1 relating to the certificate from the time the vessel becomes
2 covered by the certificate until the vessel becomes covered by
3 another certificate or becomes a documented vessel, even if no
4 other relationship exists between the jurisdiction and the
5 vessel or its owner.

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

12 § -6 Certificate of title required. (a) Beginning
13 July 1, 2018, and except as otherwise provided in subsections
14 (c) and (d):

15 (1) The owner of a vessel that does not have a valid
16 certificate of number pursuant to section 200-31 or a
17 valid certificate of title pursuant to this chapter
18 shall comply with subsection (b); and

19 (2) The owner of a vessel that has a valid certificate of
20 number pursuant to section 200-31, but does not have a
21 valid certificate of title pursuant to this chapter,



1 may comply with subsection (b) before the expiration
2 date of the vessel's certificate of number and shall
3 comply with subsection (b) after the expiration date
4 of the vessel's certificate of number.

5 (b) The owner of a vessel for which this State is the
6 state of principal use shall deliver to the department an
7 application for a certificate of title for the vessel, with the
8 applicable fee, no later than twenty days after the later of:

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

10 (2) The date this State becomes the state of principal
11 use.

12 (c) An application for a certificate of title is not
13 required for:

14 (1) A documented vessel;

15 (2) A foreign documented vessel;

16 (3) A barge;

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

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

20 (d) The department shall not issue, transfer, or renew a
21 certificate of title for a vessel issued pursuant to the



1 requirements of title 46 United States Code section 12301, as
2 amended, unless the department has created a certificate of
3 title for the vessel or an application for a certificate for the
4 vessel and the applicable fee has been delivered to the
5 department.

6 § -7 Application for certificate of title. (a) Except
7 as otherwise provided in sections -10, -15, -19,
8 -20, -21, and -22, only an owner may apply for a
9 certificate of title.

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

12 (1) The applicant's name, date of birth, driver's license
13 or civil identification number, the street address of
14 the applicant's principal residence, and, if
15 different, the applicant's mailing address;

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

18 (3) The hull identification number for the vessel or, if
19 none, an application for the issuance of a hull
20 identification number for the vessel;



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



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



1 -20, -21, or -22, an application for a certificate of
2 title shall be accompanied by:

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

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

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

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

10 (A) If the vessel was a documented vessel, a record
11 issued by the United States Coast Guard that
12 shows the vessel is no longer a documented vessel
13 and identifies the applicant as the owner;

14 (B) If the vessel was a foreign documented vessel, a
15 record issued by the foreign country that shows
16 the vessel is no longer a foreign documented
17 vessel and identifies the applicant as the owner;
18 or

19 (C) In all other cases, a certificate of origin, bill
20 of sale, or other record that identifies the



1 applicant as the owner to the satisfaction of the
2 department.

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

5 (e) A record submitted in connection with an application
6 shall be deemed part of the application. The department shall
7 maintain the record in its files.

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

13 § -8 Creation and cancellation of certificate of title.

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

19 (b) If the department creates electronic certificates of
20 title, the department shall create an electronic certificate
21 unless in the application the secured party of record or, if



1 none, the owner of record, requests that the department create a
2 written certificate.

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

- 6 (1) The application does not comply with section -7;
7 (2) The application does not contain documentation
8 sufficient for the department to determine whether the
9 applicant is entitled to a certificate;
10 (3) There is a reasonable basis for concluding that the
11 application is fraudulent or issuance of a certificate
12 would facilitate a fraudulent or illegal act; or
13 (4) The application does not comply with the law of this
14 State other than this chapter.

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

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

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



(2) Is required to cancel the certificate under another provision 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;

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

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

(4) The hull identification number;

(5) The information regarding description of the vessel listed in section -7(b)(5);

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

(7) All title brands indicated in the department's files covering the vessel, including brands indicated on a



1 certificate created by a governmental agency of
2 another jurisdiction and delivered to the department.

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

6 (c) For each title brand indicated on a certificate of
7 title, the certificate shall identify the jurisdiction under
8 whose law the title brand was created or the jurisdiction that
9 created the certificate on which the title brand was indicated.

10 If the meaning of a title brand is not easily ascertainable or
11 cannot be accommodated on the certificate, the certificate may
12 state: "Previously branded in (insert the jurisdiction under
13 whose law the title brand was created or whose certificate of
14 title previously indicated the title brand)".

15 (d) If the department's files indicate that a vessel was
16 previously registered or titled in a foreign country, the
17 department shall indicate on the certificate of title that the
18 vessel was registered or titled in that country.

19 (e) A written certificate of title shall contain a form
20 that all owners indicated on the certificate may sign to
21 evidence consent to a transfer of an ownership interest to



1 another person. The form shall include a certification, signed
2 under penalty of unsworn falsification to authorities, pursuant
3 to section 710-1063, that the statements made are true and
4 correct to the best of each owner's knowledge, information, and
5 belief.

6 (f) A written certificate of title shall contain a form
7 for the owner of record to indicate, in connection with a
8 transfer of an ownership interest, that the vessel is hull
9 damaged.

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

17 (1) Deliver to the department an application for a new
18 certificate that complies with section -7 and
19 includes the title brand designation "Hull Damaged";
20 or



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

4 (b) No later than twenty days after delivery to the
5 department of the application under subsection (a)(1) or the
6 certificate of title under subsection (a)(2), the department
7 shall create a new certificate that indicates that the vessel is
8 branded "Hull Damaged".

9 (c) Before an insurer transfers an ownership interest in a
10 hull damaged vessel that is covered by a certificate of title
11 created by the department, the insurer shall deliver to the
12 department an application for a new certificate that complies
13 with section -6 and includes the title brand designation
14 "Hull Damaged". No later than twenty days after delivery of the
15 application to the department, the department shall create a new
16 certificate that indicates that the vessel is branded "Hull
17 Damaged".

18 (d) An owner of record that fails to comply with
19 subsection (a), a person that solicits or colludes in a failure
20 by an owner of record to comply with subsection (a), or an



insurer that fails to comply with subsection (c) shall be 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 department's files as required by subsection (b).

(b) The department shall maintain in its files the information contained in all certificates of title created under this chapter. The information in the department's files shall be searchable by the hull identification number of the vessel,



1 the vessel number, the name of the owner of record, and any
2 other method used by the department.

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

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

14 (e) The department shall allow public inspection of its
15 files as provided by chapter 92F; provided that the department
16 shall not publicly disclose an individual's home address, home
17 telephone number, date of birth, citizenship status, or driver's
18 license or civil identification number, or the name of an
19 applicant whose application was not granted.

20 § -12 Action required on creation of certificate of
21 title. (a) On creation of a written certificate of title, the



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

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

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



1 the date and time of destruction or other cancellation. If a
2 written certificate being canceled is not destroyed, the
3 department shall indicate on the face of the certificate that it
4 has been canceled.

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

8 § -14 Effect of possession of certificate of title;
9 judicial process. Possession of a certificate of title shall
10 not by itself provide a right to obtain possession of a vessel.
11 Garnishment, attachment, levy, replevin, or other judicial
12 process against the certificate shall not be effective to
13 determine possessory rights to the vessel. This chapter shall
14 not prohibit enforcement under the law of this State other than
15 this chapter of a security interest in, levy on, or foreclosure
16 of a statutory or common-law lien on a vessel. Absence of an
17 indication of a statutory or common-law lien on a certificate
18 shall not invalidate the lien.

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



1 department of an application for a certificate of title that
2 identifies the secured party and otherwise complies with section

3 -7. The security interest is perfected on receipt by the
4 department of the application and the applicable fee or
5 attachment of the security interest under section 490:9-203,
6 whichever occurs later.

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 received by the department is a security interest, the
10 application shall be deemed to sufficiently identify the person
11 as a secured party. Identification on the application for a
12 certificate of a person as owner, lessor, consignor, or bailor
13 shall not be by itself a factor in determining whether the
14 person's interest is a 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 receipt by 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 shall be signed by an owner of
20 the vessel or by the secured party and shall 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 receipt by the department of the application and
7 all applicable fees or attachment of the security interest under
8 section 490:9-203, whichever occurs later.

9 (e) On receipt 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 section
14 -12(a). The department shall maintain in its files the date
15 and time of receipt of the application by the department.

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



1 interest that obtains a release from the secured party indicated
2 in the department's files or on the certificate takes free of
3 the security interest and of the rights of a transferee unless
4 the transfer is indicated in the department's files or on the
5 certificate.

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

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

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

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

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

19 If a security interest in the vessel was valid immediately
20 before deletion or cancellation against a third party as a
21 result of compliance with title 46 United States Code section



1 31321, as amended, the security interest is and remains
2 perfected until four months after cancellation of the
3 certificate or the time the security interest becomes perfected
4 under this chapter, whichever occurs earlier.

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

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

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

17 § -16 Termination statement. (a) A secured party
18 indicated in the department's files as having a security
19 interest in a vessel shall deliver a termination statement to
20 the department and, on the debtor's request, to the debtor, by
21 the earlier of:

1 (1) Twenty days after the secured party receives a signed
2 demand from an owner for a termination statement;
3 there is no obligation secured by the vessel subject
4 to the security interest; and no commitment to make an
5 advance, incur an obligation, or otherwise give value
6 secured by the vessel; or
7 (2) If the vessel holds consumer goods, thirty days after
8 there is no obligation secured by the vessel and no
9 commitment to make an advance, incur an obligation, or
10 otherwise give value secured by the vessel.
11 (b) If a written certificate of title has been created and
12 delivered to a secured party and a termination statement is
13 required under subsection (a), the secured party, no later than
14 the date required by subsection (a), shall deliver the
15 certificate to the debtor or to the department with the
16 statement. If the certificate is lost, stolen, mutilated,
17 destroyed, or is otherwise unavailable or illegible, the secured
18 party shall deliver with the statement, no later than the date
19 required by subsection (a), an application for a replacement
20 certificate in accordance with section -22.



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

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

15 § -17 Transfer of ownership. (a) On voluntary transfer
16 of an ownership interest in a vessel covered by a certificate of
17 title, the following rules shall apply:

18 (1) If the certificate is a written certificate of title
19 and the transferor's interest is noted on the
20 certificate, the transferor shall promptly sign the
21 certificate and deliver it to the transferee. If the



1 transferor does not have possession of the
2 certificate, the person in possession of the
3 certificate shall have the duty to facilitate the
4 transferor's compliance with this paragraph. A
5 secured party shall not have a duty to facilitate the
6 transferor's compliance with this paragraph if the
7 proposed transfer is prohibited by the security
8 agreement;

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

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

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

18 (c) A failure to comply with subsection (a) or to apply
19 for a new certificate of title shall not render a transfer of
20 ownership of a vessel ineffective between the parties. Except
21 as otherwise provided in section -18, -19, -23(a), or



1 -24, a transfer of ownership without compliance with
2 subsection (a) shall not be effective against another person
3 claiming an interest in the vessel.

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

8 § -18 Effect of missing or incorrect information.
9 Except as otherwise provided in section 490:9-337, a certificate
10 of title or other record required or authorized by this chapter
11 shall be effective even if it contains incorrect information or
12 does not contain required information.

13 § -19 Transfer of ownership by secured party's transfer
14 statement. (a) As used in this section, "secured party's
15 transfer statement" means a record signed by the secured party
16 of record stating:

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

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



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

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

6 (5) The name of the transferee;

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

8 (7) One of the following:

9 (A) The certificate of title is an electronic
10 certificate;

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

14 (C) The secured party is delivering the written
15 certificate of title to the department with the
16 secured party's transfer statement.

17 (b) Unless the department rejects a secured party's
18 transfer statement for a reason stated in section -8(c), no
19 later than twenty days after delivery to the department of the
20 statement and payment of fees and taxes payable under the law of
21 this State other than this chapter in connection with the



1 statement or the acquisition or use of the vessel, the
2 department shall:

3 (1) Accept the statement;

4 (2) Amend the department's files to reflect the transfer;
5 and

6 (3) If the name of the owner whose ownership interest is
7 being transferred is indicated on the certificate of
8 title:

9 (A) Cancel the certificate even if the certificate
10 has not been delivered to the department;

11 (B) Create a new certificate indicating the
12 transferee as owner; and

13 (C) Deliver the new certificate or a record
14 evidencing an electronic certificate.

15 (c) An application under subsection (a) or the creation of
16 a certificate of title under subsection (b) shall not be by
17 itself a disposition of the vessel and shall not by itself
18 relieve the secured party of its duties under article 9 of
19 chapter 490.

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



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

- 3 (1) Because of death, divorce, or other family law
4 proceeding; merger; consolidation; dissolution; or
5 bankruptcy;
6 (2) Through the exercise of the rights of a lien creditor
7 or a person having a lien created by statute or rule
8 of law; or
9 (3) Through other legal process.

10 "Transfer by law statement" means a record signed by a
11 transferee stating that by operation of law the transferee has
12 acquired or has the right to acquire an ownership interest in a
13 vessel.

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

- 15 (1) The name and last known mailing address of the owner
16 of record and the transferee and the other information
17 required by section -7(b);
18 (2) Documentation sufficient to establish the transferee's
19 ownership interest or right to acquire the ownership
20 interest;
21 (3) A statement that:



1 (A) The certificate of title is an electronic
2 certificate of title;

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

6 (C) The transferee is delivering the written
7 certificate to the department with the transfer
8 by law statement; and

9 (4) Except for a transfer described in paragraph (1) of
10 the definition of "by operation of law", evidence that
11 notification of the transfer and the intent to file
12 the transfer by law statement has been sent to all
13 persons indicated in the department's files as having
14 an interest, including a security interest, in the
15 vessel.

16 (c) Unless the department rejects a transfer by law
17 statement for a reason stated in section -8(c) or because the
18 statement does not include documentation satisfactory to the
19 department as to the transferee's ownership interest or right to
20 acquire the ownership interest, no later than twenty days after
21 delivery to the department of the statement and payment of fees



1 and taxes payable under the law of this State other than this
2 chapter in connection with the statement or with the acquisition
3 or use of the vessel, the department shall:

4 (1) Accept the statement;

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

6 and

7 (3) If the name of the owner whose ownership interest is
8 being transferred is indicated on the certificate of
9 title:

10 (A) Cancel the certificate even if the certificate
11 has not been delivered to the department;

12 (B) Create a new certificate indicating the
13 transferee as owner;

14 (C) Indicate on the new certificate any security
15 interest indicated on the canceled certificate,
16 unless a court order provides otherwise; and

17 (D) Deliver the new certificate or a record
18 evidencing an electronic certificate.

19 (d) This section shall not apply to a transfer of an
20 interest in a vessel by a secured party under part 6, article 9
21 of chapter 490.



1 § -21 Application for transfer of ownership or
2 termination of security interest without certificate of title.
3 (a) Except as otherwise provided in section -19 or -20,
4 if the department receives, unaccompanied by a signed
5 certificate of title, an application for a new certificate that
6 includes an indication of a transfer of ownership or a
7 termination statement, the department may create a new
8 certificate under this section only if:

9 (1) All other requirements under sections -7 and -8
10 are met;

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

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



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

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

§ -22 Replacement certificate of title. (a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the secured party of record or, if no secured party is indicated in



1 the department's files, the owner of record may apply for and,
2 by furnishing information satisfactory to the department, obtain
3 a replacement certificate in the name of the owner of record.

4 (b) An applicant for a replacement certificate of title
5 shall sign the application, and, except as otherwise permitted
6 by the department, the application shall comply with section

7 -7. The application shall include the existing certificate
8 unless the certificate is lost, stolen, mutilated, destroyed, or
9 otherwise unavailable.

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

13 (d) If a person receiving a replacement certificate of
14 title subsequently obtains possession of the original written
15 certificate, the person promptly shall destroy the original
16 certificate of title.

17 (e) The department may set and charge fees for a
18 replacement certificate of title.

19 § -23 Rights of purchaser other than secured party. (a)
20 A buyer in ordinary course of business has the protections
21 afforded by sections 490:2-403(2) and 490:9-320(a) even if an



1 existing certificate of title was not signed and delivered to
2 the buyer or a new certificate listing the buyer as owner of
3 record was not created.

4 (b) Except as otherwise provided in sections -17 and
5 -24, the rights of a purchaser of a vessel that is not a
6 buyer in ordinary course of business or a lien creditor are
7 governed by chapter 490.

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

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

20 (1) A buyer of the vessel, other than a person in the
21 business of selling or leasing vessels of that kind,



1 takes free of the security interest if the buyer,
2 acting in good faith and without knowledge of the
3 security interest, gives value and receives possession
4 of the vessel; and

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

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

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

1 (c) If a person submits a record to the department, or
2 submits information that is accepted by the department, and
3 requests an acknowledgment of the filing or submission, the
4 department shall send to the person an acknowledgment showing
5 the hull identification number of the vessel to which the record
6 or submission relates, the information in the filed record or
7 submission, and the date and time the record was received or the
8 submission accepted. A request under this section shall contain
9 the hull identification number and be delivered by means
10 authorized by the department.

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

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

20 (A) Identified by a hull identification number
21 designated in the request;



- 1 (B) Identified by a vessel number designated in the
2 request; or
- 3 (C) Owned by a person designated in the request; and
- 4 (2) With respect to the vessel:
- 5 (A) The name and address of any owner as indicated in
6 the department's files or on the certificate of
7 title;
- 8 (B) The name and address of any secured party as
9 indicated in the department's files or on the
10 certificate, and the effective date of the
11 information;
- 12 (C) A copy of any termination statement indicated in
13 the department's files and the effective date of
14 the termination statement; and
- 15 (D) A copy of any certificate of origin, secured
16 party transfer statement, transfer by law
17 statement under section -20, and other
18 evidence of previous or current transfers of
19 ownership.
- 20 (e) In responding to a request under this section, the
21 department may provide the requested information in any medium.



1 On request, the department shall send the requested information
2 in a record that is self-authenticating under section 626-1,
3 rule 902.

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

8 § -27 Relation to the Electronic Signatures in Global
9 and National Commerce Act. This chapter modifies, limits, and
10 supersedes the federal Electronic Signatures in Global and
11 National Commerce Act, title 15 United States Code section 7001
12 et seq., but does not modify, limit, or supersede section 101(c)
13 of that Act, title 15 United States Code section 7001(c), or
14 authorize electronic delivery of any of the notices described in
15 section 103(b) of that Act, title 15 United States Code section
16 7003(b).

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



1 on or after the effective date of this chapter, remain valid on
2 and after the effective date of this chapter.

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

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

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

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

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

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

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



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

APPROVED this 20 day of JUN , 2018

David Y. Ige

GOVERNOR OF THE STATE OF HAWAII



HB No. 2596, HD 2, SD 1


THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives

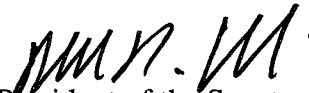



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: April 4, 2018
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.


President of the Senate


Clerk of the Senate