

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
CONSUMER PROTECTION & COMMERCE**

**Monday, February 12, 2018
2:00 PM
State Capitol, Conference Room 329**

**In consideration of
HOUSE BILL 2596, HOUSE DRAFT 1
RELATING TO THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT**

House Bill 2596, House Draft 1 proposes to implement the Uniform Certificate of Title for Vessels Act (UCOTVA). **The Department of Land and Natural Resources (Department) strongly supports this measure with the following amendments.**

UCOTVA was drafted by the Uniform Law Commission with extensive input from boat manufacturers, dealers, state boating law administrators, and the United States Coast Guard (USCG). UCOTVA provides a consistent consumer protection measure for vessel owners across the United States and its territories. Thirty-five states have implemented some form of a vessel titling law, and three of those thirty-five states have adopted UCOTVA as their vessel titling law.

Currently, vessels under the jurisdiction of the Department that do not have a USCG documentation number are only required to obtain a certificate of number with DOBOR's Vessel Registration Office (VRO). However, this certificate of number does not ensure that a vessel is not stolen because the VRO cannot verify ownership of a vessel other than with documents that a registrant provides. Thus, absence of a vessel titling law can lead to extensive fraud. Unfortunately, the Department cannot track statistics for stolen vessels because there is no vessel titling system by which to gather such information.

An example of how absence of a vessel titling law negatively affects owners of stolen vessels is the "homebuilt" vessel scenario the Department occasionally encounters. Although there are legitimate owners of homebuilt vessels, without a vessel titling requirement, a person could steal a vessel, modify the vessel to remove resemblance to its original appearance, and obtain a certificate of number from the Department with the vessel classified as a homebuilt vessel. Under this type of homebuilt vessel scenario, even if the Department receives all the required

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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

paperwork for a certificate of number, it will still not have any way of knowing that the vessel was stolen.

UCOTVA will allow the Department to issue titles for vessels in a manner similar to how the State issues titles for automobiles, with certificates of title for vessels becoming the official documents that identify the owner of a vessel. Certificates of title for vessels would be issued once for each vessel, and certificates of number would need to be renewed annually, in the same way the State's automobile title and registration system functions.

By implementing a vessel titling law, the Department hopes to reduce the amount of stolen vessels being fraudulently registered in the State. Having certificates of title for vessels will also help the VRO quickly verify the owner of a vessel, which in turn will potentially decrease processing and wait times in vessel transfers.

The Department realizes that requiring all vessel owners to immediately title their vessels upon adoption of UCOTVA could create issues and overwhelm Department staff. Therefore, the Department recommends adding language specifying that any owners who have a valid certificate of number with the Department as of the effective date of the bill will not be required to immediately obtain a certificate of title but would be required to title the vessel at the time of renewal. The Department's recommended language for § -6 of the measure is highlighted in grey as follows.

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

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

(2) The owner of a vessel that has a valid certificate of number pursuant to section 200-31 but does not have a valid certificate of title pursuant to this chapter may comply with subsection (b) before the expiration date of the vessel's certificate of number and shall comply with subsection (b) after the expiration date of the vessel's certificate of number.

(b) [Except as otherwise provided in subsections (b) and (c), the] The owner of a vessel for which this State is the state of principal use shall deliver to the department an

application for a certificate of title for the vessel, with the applicable fee, not later than twenty days after the later of:

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

~~[(b)]~~ (c) An application for a certificate of title is not required for:

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

~~[(e)]~~ (d) The department may not issue, transfer, or renew a certificate of number for a vessel issued pursuant to the requirements of title 46 United States Code section 12301, as amended, unless the department has created a certificate of title for the vessel or an application for a certificate for the vessel and the applicable fee have been delivered to the department.

Thank you for the opportunity to comment this measure.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**on H.B. NO. 2596, H.D. 1
RELATING TO THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT.**

BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

DATE: Monday, February 12, 2018, at 2:00 p.m.
Conference Room 329, State Capitol

PERSON(S) TESTIFYING: LANI EWART
for the Commission to Promote Uniform Legislation

Chair Takumi, Vice Chair Ichiyama, and the Members of the House Committee on Consumer Protection & Commerce:

My name is Lani Ewart, and I am a member of the state Commission to Promote Uniform Legislation. Thank you for this opportunity to testify in support of H.B. No. 2596, H.D. 1, Relating to the Uniform Certificate of Title for Vessels Act. The members of our state commission are Hawaii's representatives to the national Uniform Law Commission, or ULC. The ULC is a nonprofit organization that is made up of volunteer attorneys appointed by their states, and its mission is to develop and draft model legislation for states in areas in which uniformity is practical and desirable.

The ULC promulgated the Uniform Certificate of Title for Vessels Act ("UCOTVA") to allow states to issue a title identifying the owner of a boat in the same way that all states now issue a title for an owner of an automobile. Two-thirds of all states have some form of certificate of title law for vessels, but titling law for boats varies greatly from state to state, and Hawaii is one of the states without any titling requirement. This patchwork of laws across states can lead to extensive fraud. For example, title for a vessel can be "washed" by moving the vessel to a jurisdiction that does not have a vessel titling statute or has a statute that does not cover the type of vessel stolen.

UCOTVA provides the best approach to vessel titling because it (1) integrates with the Uniform Commercial Code, (2) improves consumer protection, and (3) clarifies where a vessel should be titled, just to name a few benefits.

UCOTVA was drafted to keep pace with updates to Article 9 of the Uniform Commercial Code, which has been enacted in all states to cover security interests in personal property. Titling laws in place before UCOTVA do not integrate with the Uniform Commercial Code. UCOTVA's clear rules on all matters relating to a security interest in a vessel means fewer disputes will go to court.

UCOTVA also includes a special "branding" requirement to protect consumers from purchasing unseaworthy and unsafe vessels. If the integrity of a vessel's hull was compromised by a casualty event, including a hurricane or other natural disaster, the owner or insurer must, prior to selling the vessel, either note this on the certificate or apply for a new certificate that indicates that the vessel is "hull damaged". The owner or insurer who does not comply faces an administrative penalty.

Finally, UCOTVA clarifies that a vessel must be titled where it is principally used. The owner is given 20 days to title the vessel after moving to a new state. This provision also helps to clarify where the owner is to be taxed on the vessel.

UCOTVA is supported by the National Association of State Boating Law Administrators, National Marine Manufacturers Association, lenders, and insurers, because it protects consumers and facilitates vessel purchasing and financing.

The Hawaii Commission to Promote Uniform Legislation respectfully requests passage of H.B. No. 2596, H.D. 1.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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House Committee on Consumer Protection & Commerce
Honorable Roy M. Takumi, Chair
Honorable Linda Ichiyama, Vice Chair

**RE: Testimony Commenting on H.B. 2596 HD 1, Relating to
Uniform Certificate of Title for Vessels Act**
Hearing: February 12, 2018 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **commenting on H.B. 2596 HD 1** and proposing a **small amendment consistent with the intent of the uniform act**.

H.B. 2596 HD 1 creates a process for certificates of title to watercraft, following the Uniform Certificate of Title for Vessels Act. One of the purposes of the uniform act is to address a lack of publicly accessible information regarding vessels. As the prefatory note to the uniform act explains: "This act seeks to remedy this problem by providing uniform rules on what information states will make available to those seeking to determine the ownership of a vessel." Uniform Certificate of Title for Vessels Act 2, *at* www.uniformlaws.org/shared/docs/certificate_of_title_for_vessels/ucotva_finalact_2011.pdf.

Thus, the uniform law provides:

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

Comment

Subsection (e) makes the information on the certificate of title a public record. It does not make the information in the application a public record. Therefore, nothing in this act requires that the social security or taxpayer identification number of the owner or owners, which under Section 7(b)(3) must be included in the application, be made public.

Uniform Certificate of Title of Vessels Act § 11(e) & cmt. at 36.

But the modifications to the uniform law by H.B. 2596 HD 1 do not accomplish that purpose. The comparable provision in H.B. 2596 HD 1 reads: "Except as otherwise provided by the law of this State other than this chapter, the information required under section -9 is a *government* record." **A government record is not a public record.** And applying the standards for government records in HRS ch. 92F, DLNR might seek to withhold vessel certificates from the public, defeating one of the express purposes of the uniform act.

The Law Center would request that this Committee return to the original language and intent of the uniform law by amending "government" to "public" in Section -11(e), so that the public may access vessel certificates.¹ And if necessary, the Committee can clarify what information in the certificate of title is not a public record.

Thank you again for the opportunity to testify.

¹ We note that H.B. 2596 removed the language from the uniform law that made certain portions (concerning SSN and EIN) of the certificate *application* confidential. But that language was not necessary because, unlike the uniform law, Section -7 of H.B. 2596 does not require that vessel applicants provide the SSN or EIN of the owner.

From: Ken Takayama <ktakayama13@gmail.com>
Sent: Monday, February 12, 2018 4:28 PM
To: CPCtestimony
Subject: Testimony on H.B. No. 2596, H.D.1

LATE

Chair Takumi, Vice Chair Ichiyama, and Members of the House Committee on Consumer Protection and Commerce.

My name is Ken Takayama, and I am a member of the State Commission to Promote Uniform Legislation. Thank you for this opportunity to testify in support of H.B. No. 2596, H.D.1, Relating to the Uniform Certificate of Title for Vessels Act.

(1) Concerns have been expressed that a reference to "public record" in the model uniform law was changed to read "government record" in H.B. No. 2596, H.D.1, thereby making the contents of the proposed law less accessible to the public.

(2) We believe that this was neither the intent nor the effect.

(3) Part of the difficulty or confusion may stem from the fact that Hawaii is the only state that has enacted the Uniform Information Practices Act, which introduced the term "government record" to Hawaii statutory law. Act 262, Session Laws of Hawaii 1988 not only enacted the UIPA, but also repealed sections 92-50, 92-51, and 92-52, Hawaii Revised Statutes, thereby essentially changing the name of records held by state agencies from "public records" to "government records".

(4) There apparently is concern that the term "public records" provides for greater openness and the so-called "change" to

"government records" thereby reduces this openness. This is not the case:

(a) It might be one thing if, assuming a substantive difference between "government" and "public" records, an existing statute that read "public" records was changed to read "government" records. But this was not the case. In reality, language in a model uniform law ("public record") was changed in the drafting of H.B. No. 2596 to avoid using a term that was now obsolete in the Hawaii statutes and substituting the term that is currently in use ("government record").

(b) I also checked with the staff at the National Uniform Law Commission (ULC) in Chicago to ascertain whether they ascribed any particular meaning to the term "public record" for purposes of their drafting of model uniform acts available for enactment by the states. They do not.

(c) Finally, I checked the Hawaii Revised Statutes to see whether the term "public records" was defined anywhere. The only occurrence I was able to find was in Rule 1001 of chapter 626 (the Hawaii Rules of Evidence)--and that definition of "public record" appeared to be substantially similar to the UIPA definition of the term "government record" in section 92F-3.

5. Accordingly, we do not see how the change of a reference from "public record" to "government record" will have the negative impacts articulated by those expressing concerns.

6. Please contact me by phone at 808-542-3659 or by email at KTakayama13@gmail.com .

Thank you very much for this opportunity to testify.

