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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of  
SUZANNE D. CASE  
Chairperson

Before the Senate Committee on  
WATER & LAND

Monday, March 19, 2018  
2:55 PM  
State Capitol, Conference Room 224

In consideration of  
HOUSE BILL 2596, HOUSE DRAFT 2  
RELATING TO THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

House Bill 2596, House Draft 2 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

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 recommends that Section -7(b) be amended to include an applicant's date of birth and driver's license/state identification card number among information that the Department will collect for certificate of title applications. This amendment is to comply with federal regulatory requirements. The Department also consulted the Office of Information Practices on the language in Section -11(e) and recommends that the language be amended to clarify that certain information collected from applicants would not be disclosed.

The Department's recommended changes (highlighted in grey) are reflected below:

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

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

- (1) The applicant's name, date of birth, driver's license or state identification card number, the street address of the applicant's principal residence, and, if different, the applicant's mailing address;
- (2) The name and mailing address of each other owner of the vessel;
- (3) The hull identification number for the vessel or, if none, an application for the issuance of a hull identification number for the vessel;
- (4) The vessel number for the vessel or, if none issued by the department, an application for a vessel number;

- (5) A description of the vessel as required by the department, which must include:
  - (A) The official number for the vessel, if any, assigned by the United States Coast Guard or the vessel registration number assigned by department;
  - (B) The name of the manufacturer, builder, or maker;
  - (C) The model year or the year in which the manufacture or build of the vessel was completed;
  - (D) The overall length of the vessel;
  - (E) The vessel type;
  - (F) The hull material;
  - (G) The propulsion type;
  - (H) The engine drive type, if any; and
  - (I) The fuel type, if any;
- (6) An indication of all security interests in the vessel known to the applicant and the name and mailing address of each secured party;
- (7) A statement that the vessel is not a documented vessel, a foreign-documented vessel, or a barge;
- (8) Any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created;
- (9) If the applicant knows that the vessel is hull 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 must be accompanied by:

- (1) A certificate of title signed by the owner shown on the certificate and which:
  - (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
- (2) If there is no certificate of title:
  - (A) If the vessel was a documented vessel, a record issued by the United States Coast Guard which shows the vessel is no longer a documented vessel and identifies the applicant as the owner;
  - (B) If the vessel was a foreign-documented vessel, a record issued by the foreign country which shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or
  - (C) In all other cases, a certificate of origin, bill of sale, or other record that to the satisfaction of the department identifies the applicant as the owner.
- (3) Payment of any applicable titling fees, as set by the department.

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

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

**§ -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; and
- (3) Index the files of the department as required by subsection (b).

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

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

(d) Upon request, for safety, security, or law-enforcement purposes, the department shall provide to federal, state, or local government the information in its files relating to any

vessel for which the department has issued a certificate of title.

(e) ~~[Except as otherwise provided by the law of this State other than this chapter, the information required under section 9 is a government record.]~~ The department shall allow public inspection of its files as provided by chapter 92F; provided that the department shall not publicly disclose individuals' home addresses, home telephone numbers, dates of birth, citizenship status, driver's license or state identification card numbers, or the name of an applicant whose application has not been granted.

Thank you for the opportunity to comment this measure.

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Water and Land

From: Cheryl Kakazu Park, Director

Date: March 19, 2018, 2:55 p.m.  
State Capitol, Conference Room 224

Re: Testimony on H.B. No. 2596, H.D. 2  
Relating to the Uniform Certificate of Title for Vessels Act

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Thank you for the opportunity to submit testimony on this bill, which would require vessel owners to apply for a certificate of title and establish the information required in such an application. The Office of Information Practices (OIP) takes no position on the substance of this bill, but is testifying to **support a proposed amendment** by the Department of Land and Natural Resources (DLNR) to clarify the public accessibility of information relating to such applications.

**DLNR's amendment to proposed section \_\_\_-11(e), at bill page 27, lines 6-7, would provide that "[t]he department shall allow public inspection of its files as provided by chapter 92F; provided that the department shall not publicly disclose individuals' home addresses, home telephone numbers, dates of birth, citizenship status, driver's license or state identification card number, or the name of an applicant whose application has not been granted."** OIP has previously opined that DLNR could and should redact some vessel registration information for privacy reasons, specifically "[h]ome addresses, home telephone numbers, dates of birth, and citizenship status," as well as the name of an applicant whose registration is still

pending or has been denied. OIP Op. Ltr. No. 99-3 at 18. The proposed amendment would be consistent with that opinion. It would also add in a driver's license or state identification card number as a piece of information that would be withheld from the public; however, OIP has no concerns about the proposed protection for such information as it could be generally be withheld from public disclosure under the Uniform Information Practices Act, chapter 92F, HRS.

Thank you for considering OIP's testimony.



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Senate Committee on Water and Land  
Honorable Karl Rhoads, Chair  
Honorable Mike Gabbard, Vice Chair

**RE: Testimony Commenting on H.B. 2596 H.D. 2, Relating to  
Uniform Certificate of Title for Vessels Act**

Hearing: March 19, 2018 at 2:45 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 H.D. 2.**

This bill 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 provide “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 at 2, [www.uniformlaws.org/shared/docs/certificate\\_of\\_title\\_for\\_vessels/ucotva\\_finalact\\_2011.pdf](http://www.uniformlaws.org/shared/docs/certificate_of_title_for_vessels/ucotva_finalact_2011.pdf). Subsection -11(e) of H.B. 2596 does not provide such uniform rules on what information will be public.

The Law Center takes no position on DLNR’s proposed amendment to make the certificates of title confidential.

Without DLNR’s proposed amendment, however, the current draft is unclear regarding what information will be publicly accessible because it only refers to the certificates of title as “government records”. **We respectfully request that this Committee not leave the law ambiguous as to public access.**

The certificates of title will include: (1) date created, (2) name of owner of record, (3) owner’s mailing address, (4) hull identification number, (5) information on security interests, (6) name and mailing address of secured parties, and (7) title brands on the vessel. To avoid later disputes, please specify what information, if any, the Legislature intends to be public in the certificates of title.

As background, 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 (emphasis added).

The comparable provision of H.B. 2596 H.D. 2 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.**

Under Hawai`i law, a “government record” is any information maintained by a government agency. HRS § 92F-3. Whether such a document is available to the public on request depends on the UIPA exceptions. *Id.* § 92F-13.

And under Hawai`i law, a “public record” is information that must be disclosed to the public on request—irrespective of exceptions to disclosure.<sup>1</sup> *E.g.*, HRS §§ 11-63, 84-31, 92-9(b), 97-6, 103D-107, 206M-21, 211F-10, 321-475, 377-13, 451D-3, 466K-6, 457-12.5(e), 485A-608(a), 706-669.

Thank you again for the opportunity to testify.

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<sup>1</sup> As the Commission to Promote Uniform Legislation likely will explain, there is more ambiguity in the use of the term “public records” for laws adopted between 1976 and 1987 because during that period the former public records law defined “public record” more broadly. *E.g.*, HRS § 626-1-1001(5) (enacted in 1980); *see* HRS §§ 92-50, 92-51 (1976) (repealed). Pre-1976 and current usage follows the narrower meaning above.

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

**on H.B. NO. 2596, H.D. 2  
RELATING TO THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT.**

**BEFORE THE SENATE COMMITTEE ON WATER AND LAND**

**DATE:** Monday, March 19, 2018, at 2:55 p.m.  
Conference Room 224, State Capitol

**PERSON(S) TESTIFYING:** LANI EWART and/or KEN TAKAYAMA  
for the Commission to Promote Uniform Legislation

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Chair Rhoads, Vice Chair Gabbard, and the Members of the Senate Committee on Water and Land:

As members of the state Commission to Promote Uniform Legislation, we thank you for this opportunity to testify in support of H.B. No. 2596, H.D. 2, 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.

Your Committee also passed S.B. No. 2974, the counterpart of H.B. 2596, on February 7, 2018.

The Hawaii Commission to Promote Uniform Legislation respectfully requests passage of H.B. No. 2596, H.D. 2.

**HB-2596-HD-2**

Submitted on: 3/15/2018 8:49:53 PM

Testimony for WTL on 3/19/2018 2:55:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments: