



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
JUDICIARY

Tuesday, February 27, 2018
9:30 AM
State Capitol, Conference Room 016

In consideration of
SENATE BILL 2974, SENATE DRAFT 1
RELATING TO THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

Senate Bill 2974, Senate 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

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.

After discussion with the Office of Information Practices and other involved stakeholders, the Department recommends that Section -11(e) be amended to clarify that information collected under Section -9 are confidential government records. The Department's recommended change (highlighted in grey) to Section -11 is reflected below:

§ -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]~~ or in this chapter, the information required under section -9 is a government record~~[-]~~ and shall be confidential.

Thank you for the opportunity to comment this measure.

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

**on S.B. NO. 2974, S.D. 1
RELATING TO THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT.**

BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 27, 2018, at 9:30 a.m.
Conference Room 016, State Capitol

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

Chair Taniguchi, Vice Chair Rhoads, and the Members of the Senate Committee on Judiciary:

As members of the state Commission to Promote Uniform Legislation, we thank you for this opportunity to testify in support of S.B. No. 2974, S.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.

Concerns have been expressed that a reference to "public record" in the model version of UCOTVA was changed to read "government record" in S.B. No. 2974, thereby making the contents of the proposed law less accessible to the public.

We believe that this was neither the intent nor the effect. 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 ("UIPA"), 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".

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: It would be one thing if, assuming there is a substantive difference between "government" and "public" records, an existing statute that read "public" records was changed to read "government" records. However, that did not happen with S.B. No. 2974. The term "public record" in a model uniform law was changed in the drafting of S.B. No. 2974 to avoid using a term that was now obsolete in the Hawaii statutes and substituting the term that is currently in use, which is "government record".

We have 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.

Finally, we have checked the Hawaii Revised Statutes to see whether the term "public records" was defined anywhere. The only occurrence we were 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.

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

The Hawaii Commission to Promote Uniform Legislation respectfully requests passage of S.B. No. 2974, S.D. 1.

THE CIVIL BEAT
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Senate Committee on Judiciary
Honorable Brian T. Taniguchi, Chair
Honorable Karl Rhoads, Vice Chair

**RE: Testimony Commenting on S.B. 2974 S.D. 1, Relating to
Uniform Certificate of Title for Vessels Act**

Hearing: February 27, 2018 at 9:30 a.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 S.B. 2974 S.D. 1**.

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. Subsection -11(e) of S.B. 2974 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 S.B. 2974 S.D. 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.**

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.¹ *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.

¹ 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.

SB-2974-SD-1

Submitted on: 2/26/2018 7:53:34 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Testifying for Ho`omana Pono, LLC	Support	Yes

Comments:

In STRONG SUPPORT.