

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Wednesday, February 7, 2018
2:46 PM
State Capitol, Conference Room 224**

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

Senate Bill 2974 proposes to implement the Uniform Certificate of Title for Vessels Act (UCOTVA). **The Department of Land and Natural Resources (Department0 strongly supports this measure with the following proposed 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

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

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DEPUTY DIRECTOR - WATER

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 is reflected below in § -6. Recommended added language to be added is underlined; recommended language removal is bracketed and stricken.

§ -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.

SB-2974

Submitted on: 2/3/2018 4:29:07 PM

Testimony for WTL on 2/7/2018 2:46:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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

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

Hearing: February 7, 2018 at 2:46 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 S.B. 2974** and proposing a **small amendment consistent with the intent of the uniform act**.

S.B. 2974 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 at 2, *available 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 S.B. 2974 do not accomplish that purpose. The comparable provision in S.B. 2974 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

Thank you again for the opportunity to testify.

¹ We note that S.B. 2974 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 S.B. 2974 does not require that vessel applicants provide the SSN or EIN of the owner.

February 5, 2018



Committee on Water and Land
The Senate
Hawaii Legislature
Hearing date: February 7, 2:46PM
State Capitol, Conf. Rm. 224
415 S. Beretania St. Honolulu, HI 96813

Re: S.B. 2974, Relating to the Uniform Certificate of Title for Vessels Act

Dear Mr. Chairman and members of the committee:

Boat History Report (BHR) would like to take this opportunity to express our strong support for the passage of Senate Bill 2974, the Uniform Certificate of Title for Vessels Act (UCOTVA).

BHR is the leading provider in watercraft history reports, with a mission to help boaters make more informed decisions when purchasing pre-owned watercraft. We work with law enforcement, insurance companies, financial institutions, marine investigators, surveyors, and other businesses and organizations to help research and verify the history of vessels, protect investments, and uncover damage that could jeopardize the safety of individuals on the water. Additionally, I am the Vice Chair for the National Association of State and Boating Law Administrators (NASBLA) Vessel Identification, Registration, and Titling Committee (VIRT), and Charge Leader for VIRT_N&T_2018-2: UCOTVA.

BHR strongly supports the adoption of UCOTVA as it will help dealers and consumers to make more informed decisions on vessels coming from or going to the State of Hawaii. By adopting UCOTVA, Hawaii will no longer be considered a "title-washing" state, meaning that a vessel with a negative brand can no longer be brought to Hawaii to eliminate the history and title of the vessel. Under UCOTVA, you would receive and maintain all negative brands, including damaged, theft, or salvage, associated with the vessel. There were an estimated 63,000 recreational insured boats damaged in 2017 between Hurricane Harvey and Hurricane Irma, some of which will be haphazardly repaired and put back on the market for unsuspecting buyers. The universal adoption of UCOTVA will drastically reduce the ability to sell these boats with undisclosed damaged, and will aid and facilitate boating safety when the integrity of a vessels hull has been compromised. Additionally, UCOTVA deters and impedes the theft of boats by providing both government officials and interested buyers with a simple means of identifying vessels. UCOTVA also promotes new commercial activity and facilitates vessel financing because security interests perfected pursuant to the Act should receive the status of a preferred ship mortgage under federal law.

For these reasons, BHR strongly supports Senate Bill 2974, the Uniform Certificate of Title for Vessels Act, and greatly appreciates the opportunity to express our position.

Respectfully,

A handwritten signature in black ink, appearing to read "Caroline A. Mantel". The signature is fluid and cursive, with a large loop at the end.

Caroline A. Mantel
Chief Operating Officer- Boat History Report

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

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

BEFORE THE HOUSE COMMITTEE ON WATER AND LAND

DATE: Wednesday, February 7, 2018, at 2:46 p.m.
Conference Room 224, State Capitol

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

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

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 S.B. No. 2974, 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 S.B. No. 2974.

February 5, 2018

Committee on Water and Land
Senate
Hawaii Legislature
Honolulu, HI

Re: S.B. 2974, the Uniform Certificate of Title for Vessels Act

Dear Mr. Chairman and members of the committee:

On behalf of the National Marine Manufacturers Association (NMMA), I thank you for the opportunity to express the association's strong support for Senate Bill 2974, the Uniform Certificate of Title for Vessels Act.

NMMA is the leading recreational marine industry trade association in North America, representing 1,500 boat, engine and accessory manufacturers. NMMA members collectively produce more than 80 percent of the recreational marine products sold in the United States. Recreational boating is a popular and economically important past time in Hawaii with over 11,000 registered boats. The recreational boating industry contributes \$210 million and over 1,100 jobs to the state's economy.

NMMA strongly supports the adoption of the Uniform Certificate of Title for Vessels Act. This bill brings boat titles on par with the protections and benefits provided by automotive titles for automobiles. NMMA members, boat dealers, consumers, owners and the marine industry as a whole will greatly benefit from these changes. For boat dealers, S.B. 2974 will help them make sure that the vessel they accept as a trade-in or purchase at auction is not stolen or structurally damaged, especially as other states adopt the bill's standardized language developed by the Uniform Law Commission (ULC). By ensuring that a boat's owner is easily identifiable, this bill will promote the financing of vessels but also deter theft. The adoption of this act will also give buyers confidence that the seller is the rightful owner that the vessel is structurally sound. This is an important protection for businesses and recreational boaters across Hawaii, particularly after storm events which cause substantial damage to many boats. We have seen many instances of persons buying storm-damaged vessels at auction that have been totaled by insurance companies, making cosmetic repairs and selling unsound vessels in "driveway" sales to the public. The branding provision will go a long way toward protecting consumers and dealers from such scams.

The Uniform Certificate of Title for Vessels Act represents a significant improvement over the patch-work of vessel titling statues, and will bring Hawaii in line with other states that have adopted its uniform language and requirements.

Executive Committee

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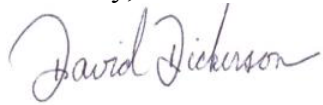
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NMMA

Just as with other ULC-developed Acts, the ULC encourages states to adopt this legislation to create a national, uniform and seamless network of titling laws. UCOTVA facilitates interstate sales and transfers of boats, gives lending institutions more security by allowing them to “perfect” loans on boats that do not qualify for USCG documentation. For law enforcement, S.B. 2974 provides greater transparency as boats are bought and sold across state jurisdictions and will help them identify boats stolen on the mainland and brought to Hawaii, as well as boats stolen within the state.

For these reasons NMMA strongly supports S.B. 2974, the Uniform Certificate of Title for Vessels Act. Should you have any questions, please contact me at ddickerson@nmma.org.

Sincerely,

A handwritten signature in cursive script that reads "David Dickerson".

David Dickerson
Vice-President State Government Relations



February 5, 2018

Senate Committee on Water and Land
Hawaii Legislature
Honolulu, HI

Re: S.B. 2974, Uniform Certificate of Title for Vessels Act

Dear Mr. Chairman and members of the committee,

On behalf the Boat Owners Association of The United States (BoatU.S.) , representing over 2,500 members who enjoy boating in Hawaii, I am contacting you to voice support for S.B. 2974, the Uniform Certificate of Title for Vessels Act. This legislation, based on model legislation developed by the Uniform Law Commission, will create a uniform system of boat titling that will be recognized nationwide and by the United States Coast Guard.

While all states have motor vehicle title laws, these do not apply to recreational boats. Hawaii currently has no such vessel title law. The adoption of S.B. 2974 would provide important additional protections and benefits for boat owners. This model vessel title legislation institutionalizes several consumer protection mechanisms that are already commonplace for motor vehicles. These include clear labeling of significant structural damage on vessel titles, the creation of a uniform system to identify legitimate vessel owners/lien-holders and better prevention of the sale of stolen boats.

This legislation will provide boat buyers with protection by clearly labeling the titles of damaged vessels. By “branding” the titles of vessels that suffer significant damage, buyers will be made aware of material information that could affect a vessel’s condition. For example, the titles of vessels severely damaged in a storm would be branded, thereby alerting the next and all subsequent buyers (whether they are local or clear across the country) to pay close attention to any repairs and be alert for potential problems.

This legislation will help prevent the sale of stolen boats. In states that do not currently issue vessel titles a stolen boat can be sold using a fraudulent bill of sale or forged registration document. Uniform vessel titles will help prevent such transactions, protecting both the owner of the stolen boat and the potential buyer.

S.B. 2974 will allow for the creation of so-called “perfected” liens, improving the protections afforded to boat loan originators. A perfected lien assures a lender their claim to a vessel will be consider first in any title disputes. This, in turn, should decrease the interest costs to the boat buyer because the lender will have a greater likelihood of being paid should a loan default. Note that the creating of “perfected” liens will also require a rulemaking by the United States Coast Guard

With over 560,000 members nationwide, BoatU.S. represents the interests of recreational boaters throughout the United States.

Thank you for your consideration of our views. Please let us know if we can provide additional information on this or any other recreational boating matters at govtaffairs@boatus.com.

Sincerely,

A handwritten signature in cursive script that reads "Christopher M. Edmonston". The signature is written in dark ink and is positioned above the printed name and title.

Chris Edmonston
Vice President, Government Affairs