

ACT 46

H.B. NO. 2596

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:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT**

§ -1 **Short title.** This chapter may be cited as the Uniform Certificate of Title for Vessels Act.

§ -2 **Definitions.** (a) As used in this chapter, unless the context otherwise requires:

“Barge” means a vessel that is not self propelled or fitted for propulsion by sail, paddle, oar, or similar device.

“Builder’s certificate” means a certificate of the facts of build of a vessel described in title 46 Code of Federal Regulations section 67.99, as amended.

“Buyer” means a person that buys or contracts to buy a vessel.

“Cancel”, with respect to a certificate of title, means to make the certificate ineffective.

“Certificate of origin” means a record created by a manufacturer or importer as the manufacturer’s or importer’s proof of identity of a vessel. “Certificate of origin” includes a manufacturer’s certificate or statement of origin and an importer’s certificate or statement of origin. “Certificate of origin” does not include a builder’s certificate.

“Certificate of title” means a record, created by the department under this chapter or by a governmental agency of another jurisdiction under the law of that jurisdiction, that is designated as a certificate of title by the department or agency and is evidence of ownership of a vessel.

“Dealer” means a person, including a manufacturer, in the business of selling vessels.

“Department” means the department of land and natural resources.

“Documented vessel” means a vessel covered by a certificate of documentation issued pursuant to title 46 United States Code section 12105, as amended.

“Documented vessel” does not include a foreign documented vessel.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic certificate of title” means a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form.

“Foreign documented vessel” means a vessel the ownership of which is recorded in a registry maintained by a country other than the United States that identifies each person that has an ownership interest in a vessel and includes a unique alphanumeric designation for the vessel.

“Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

“Hull damaged” means compromised with respect to the integrity of a vessel’s hull by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence, or the sinking of a vessel in a manner that creates a significant risk to the integrity of the vessel’s hull.

“Hull identification number” means the alphanumeric designation assigned to a vessel pursuant to title 33 Code of Federal Regulations part 181, as amended.

“Lien creditor”, with respect to a vessel, means:

- (1) A creditor that has acquired a lien on the vessel by attachment, levy, or the like;
- (2) An assignee for benefit of creditors from the time of assignment;
- (3) A trustee in bankruptcy from the date of the filing of the petition; or
- (4) A receiver in equity from the time of appointment.

“Owner” means a person that has legal title to a vessel.

“Owner of record” means the owner indicated in the department’s files or, if the files indicate more than one owner, the owner indicated first.

“Person” means an individual; corporation; business trust; estate; trust; statutory trust; partnership; limited liability company; association; joint venture; public corporation; government or governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

“Purchase” means to take by sale, lease, mortgage, pledge, consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in a vessel.

“Purchaser” means a person that takes by purchase.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Secured party”, with respect to a vessel, means a person:

- (1) In whose favor a security interest is created or provided for under a security agreement, regardless of whether any obligation to be secured is outstanding;
- (2) That is a consignor under article 9 of chapter 490; or
- (3) That holds a security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e).

“Secured party of record” means the secured party whose name is indicated as the name of the secured party in the department’s files or, if the files indicate more than one secured party, the name indicated first.

“Security interest” means an interest in a vessel that secures payment or performance of an obligation if the interest is created by contract or arises under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e). “Security interest” includes any interest of a consignor in a vessel in a transaction that is subject to article 9 of chapter 490. “Security interest” does not include the special property

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

“Sign” means, with present intent to authenticate or adopt a record, to:

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

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“State of principal use” means the state on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year.

“Title brand” means a designation of previous damage, use, or condition that shall be indicated on a certificate of title.

“Transfer of ownership” means a voluntary or involuntary conveyance of an interest in a vessel.

“Vessel” means any watercraft used or capable of being used as a means of transportation on water, except:

- (1) An amphibious vehicle for which a certificate of title is issued pursuant to part III of chapter 286 or a similar statute of another state;
- (2) A watercraft less than eight feet in length and propelled solely by sail, paddle, oar, or an engine of less than ten horsepower;
- (3) A watercraft that operates only on a permanently fixed, manufactured course and the movement of which is restricted to or guided by means of a mechanical device to which the watercraft is attached or by which the watercraft is controlled;
- (4) A stationary floating structure that:
 - (A) Does not have and is not designed to have a mode of propulsion of its own;
 - (B) Is dependent for utilities upon a continuous utility hookup to a source originating on shore; and
 - (C) Has a permanent, continuous hookup to a shoreside sewage system;
- (5) A watercraft owned by the United States; a state; a foreign government; or a political subdivision of the United States, a state, or a foreign government; and
- (6) A watercraft used solely as a lifeboat on another watercraft.

“Vessel number” means the alphanumeric designation for a vessel issued pursuant to title 46 United States Code section 12301, as amended.

“Written certificate of title” means a certificate of title 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 that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. “Buyer in the ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

“Debtor” means:

- (1) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
- (2) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (3) A consignee.

“Knowledge” means actual knowledge.

“Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

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

“Notice” shall have the same meaning as in section 490:1-202.

“Sale” shall have the same meaning as in section 490:2-106(1).

“Security agreement” means an agreement that creates or provides for a security interest.

“Seller” means a person who sells or contracts to sell goods.

“Send” in connection with a writing, record, or notice means:

- (1) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or
- (2) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

“Value” shall have the same meaning as in section 490:1-204.

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

§ -3 Applicability. Subject to section -28, this chapter applies to any transaction, certificate of title, or record relating to a vessel, even if the

transaction, certificate of title, or record was entered into or created before the effective date of this chapter.

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

§ -5 **Law governing vessel covered by certificate of title.** (a) The local law of the jurisdiction under whose certificate of title a vessel is covered governs all issues relating to the certificate from the time the vessel becomes covered by the certificate until the vessel becomes covered by another certificate or becomes a documented vessel, even if no other relationship exists between the jurisdiction and the vessel or its owner.

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

§ -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); and

(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) 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, no 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.

(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.

(d) The department shall not issue, transfer, or renew a certificate of title 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 has been delivered to the department.

§ -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 shall be signed by the applicant and contain:

- (1) The applicant's name, date of birth, driver's license or civil identification 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 is issued by the department, an application for a vessel number;
 - (5) A description of the vessel as required by the department, which shall 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 shall be accompanied by:
- (1) A certificate of title signed by the owner shown on the certificate and that:
 - (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 that 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 that 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 identifies the applicant as the owner to the satisfaction of the department.

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

(e) A record submitted in connection with an application shall be deemed 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 the law of this State other than this chapter in connection with the application or the acquisition or use of the vessel.

§ -8 Creation and cancellation of certificate of title. (a) Unless an application for a certificate of title is rejected under subsection (c) or (d), the department shall create a certificate for the vessel in accordance with subsection (b) no later than sixty days after delivery to it of an application that complies with section -7.

(b) If the department creates electronic certificates of title, the department shall create an electronic certificate unless in the application the secured party of record or, if none, the owner of record, requests that the department create a written certificate.

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

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

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

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

- (1) Could have rejected the application for the 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 certificate created by a governmental agency of another jurisdiction and delivered to the department.
- (b) This chapter shall not preclude the department from noting on a certificate of title the name and mailing address of a secured party that is not a secured party of record.
- (c) For each title brand indicated on a certificate of title, the certificate shall identify the jurisdiction under whose law the title brand was created or the jurisdiction that created the certificate on which the title brand was indicated. If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate, the certificate may state: "Previously branded in (insert the jurisdiction under whose law the title brand was created or whose certificate of title previously indicated the title brand)".
- (d) If the department's files indicate that a vessel was previously registered or titled in a foreign country, the department shall indicate on the certificate of title that the vessel was registered or titled in that country.
- (e) A written certificate of title shall contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest to another person. The form shall include a certification, signed under penalty of unsworn falsification to authorities, pursuant to section 710-1063, that the statements made are true and correct to the best of each owner's knowledge, information, and belief.
- (f) A written certificate of title shall contain a form for the owner of record to indicate, in connection with a transfer of an ownership interest, that the vessel is hull damaged.

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

- (1) Deliver to the department an application for a new certificate that complies with section 7 and includes the title brand designation "Hull Damaged"; or
 - (2) Indicate on the certificate in the place designated for that purpose that the vessel is hull damaged and deliver the certificate to the transferee.
- (b) No later than twenty days after delivery to the department of the application under subsection (a)(1) or the certificate of title under subsection (a)(2), the department shall create a new certificate that indicates that the vessel is branded "Hull Damaged".
- (c) Before an insurer transfers an ownership interest in a hull damaged vessel that is covered by a certificate of title created by the department, the insurer shall deliver to the department an application for a new certificate that complies with section 6 and includes the title brand designation "Hull Damaged". No later than twenty days after delivery of the application to the department, the department shall create a new certificate that indicates that the vessel is branded "Hull Damaged".
- (d) An owner of record that fails to comply with subsection (a), a person that solicits or colludes in a failure 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, 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) The department shall allow public inspection of its files as provided by chapter 92F; provided that the department shall not publicly disclose an individual's home address, home telephone number, date of birth, citizenship status, or driver's license or civil identification number, or the name of an applicant whose application was not granted.

§ -12 Action required on creation of certificate of title. (a) On creation of a written certificate of title, the department shall promptly send the certificate to the secured party of record or, if none, to the owner of record, at the address indicated for that person in the department's files. On creation of an electronic certificate of title, the department shall promptly send a record evidencing the certificate to the owner of record and, if there is one, to the secured party of record, at the address indicated for that person in the department's files. The department may send the record to the person's mailing address or, if indicated in its files, an electronic mail address.

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

(c) Before the department creates an electronic certificate of title, any written certificate for the vessel shall be surrendered to the department. If the department creates an electronic certificate, the department shall destroy or otherwise cancel the written certificate for the vessel that has been surrendered to the department and maintain in its files the date and time of destruction or other cancellation. If a written certificate being canceled is not destroyed, the department shall indicate on the face of the certificate that it has been canceled.

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

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

§ -15 **Perfection of security interest.** (a) Except as otherwise provided in this section or section -28, a security interest in a vessel may be perfected only by receipt by the department of an application for a certificate of title that identifies the secured party and otherwise complies with section -7. The security interest is perfected on receipt by the department of the application and the applicable fee or attachment of the security interest under section 490:9-203, whichever occurs later.

(b) If the interest of a person named as owner, lessor, consignor, or bailor in an application for a certificate of title received by the department is a security interest, the application shall be deemed to sufficiently identify the person as a secured party. Identification on the application for a certificate of a person as owner, lessor, consignor, or bailor shall not be by itself a factor in determining whether the person's interest is a security interest.

(c) If the department has created a certificate of title for a vessel, a security interest in the vessel may be perfected by receipt by the department of an application, on a form the department may require, to have the security interest added to the certificate. The application shall be signed by an owner of the vessel or by the secured party and shall include:

- (1) The name of the owner of record;
- (2) The name and mailing address of the secured party;
- (3) The hull identification number for the vessel; and
- (4) If the department has created a written certificate of title for the vessel, the certificate.

(d) A security interest perfected under subsection (c) is perfected on receipt by the department of the application and all applicable fees or attachment of the security interest under section 490:9-203, whichever occurs later.

(e) On receipt of an application that complies with subsection (c) and payment of all applicable fees, the department shall create a new certificate of title pursuant to section -8 and deliver the new certificate or a record evidencing an electronic certificate pursuant to section -12(a). The department shall maintain in its files the date and time of receipt of the application by the department.

(f) If a secured party assigns a perfected security interest in a vessel, the receipt by the department of a statement providing the name of the assignee as secured party shall not be required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. A purchaser of a vessel subject to a security interest that obtains a release from the secured party indicated in the department's files or on the certificate takes free of the security interest and of the rights of a transferee unless the transfer is indicated in the department's files or on the certificate.

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

- (1) Created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is in the business of selling vessels;
- (2) In a barge for which no application for a certificate of title has been delivered to the department; or
- (3) In a vessel before delivery if the vessel is under construction, or completed, pursuant to contract and for which no application for a certificate has been delivered to the department.

(h) This subsection shall only apply if a certificate of documentation for a documented vessel is deleted or canceled. If a security interest in the vessel was valid immediately before deletion or cancellation against a third party as a result of compliance with title 46 United States Code section 31321, as amended, the security interest is and remains perfected until four months after cancellation of the certificate or the time the security interest becomes perfected under this chapter, whichever occurs earlier.

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

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

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

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

- (1) Twenty days after the secured party receives a signed demand from an owner for a termination statement; there is no obligation secured by the vessel subject to the security interest; and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel; or
- (2) If the vessel holds consumer goods, thirty days after there is no obligation secured by the vessel and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel.

(b) If a written certificate of title has been created and delivered to a secured party and a termination statement is required under subsection (a), the secured party, no later than the date required by subsection (a), shall deliver the certificate to the debtor or to the department with the statement. If the certificate is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, the secured party shall deliver with the statement, no later than the date required by subsection (a), an application for a replacement certificate in accordance with section -22.

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

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

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

- (1) If the certificate is a written certificate of title and the transferor's interest is noted on the certificate, the transferor shall promptly sign the certificate and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of the certificate shall have the duty to facilitate the transferor's compliance with this paragraph. A secured party shall not have a duty to facilitate the transferor's compliance with this paragraph if the proposed transfer is prohibited by the security agreement;
- (2) If the certificate of title is an electronic certificate of title, the transferor promptly shall sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee; and
- (3) The transferee shall have a right enforceable by specific performance to require the transferor to comply with paragraph (1) or (2).

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

(c) A failure to comply with subsection (a) or to apply for a new certificate of title shall not render a transfer of ownership of a vessel ineffective between the parties. Except as otherwise provided in section -18, -19, -23(a), or -24, a transfer of ownership without compliance with subsection (a) shall not be effective against another person claiming an interest in the vessel.

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

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

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

- (1) That there has been a default on an obligation secured by the vessel;
- (2) The secured party of record is exercising or has exercised post-default remedies with respect to the vessel;
- (3) By reason of the exercise, the secured party of record has the right to transfer the ownership interest of an owner, and the name of the owner;
- (4) The name and last-known mailing address of the owner of record and the secured party of record;
- (5) The name of the transferee;
- (6) Other information required by section -7(b); and
- (7) One of the following:
 - (A) The certificate of title is an electronic certificate;
 - (B) The secured party does not have possession of the written certificate of title created in the name of the owner of record; or

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

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

- (1) Accept the statement;
- (2) Amend the department's files to reflect the transfer; and
- (3) If the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:
 - (A) Cancel the certificate even if the certificate has not been delivered to the department;
 - (B) Create a new certificate indicating the transferee as owner; and
 - (C) Deliver the new certificate or a record evidencing an electronic certificate.

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

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

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

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

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

(b) A transfer by law statement shall contain:

- (1) The name and last known mailing address of the owner of record and the transferee and the other information required by section -7(b);
- (2) Documentation sufficient to establish the transferee's ownership interest or right to acquire the ownership interest;
- (3) A statement that:
 - (A) The certificate of title is an electronic certificate of title;
 - (B) The transferee does not have possession of the written certificate of title created in the name of the owner of record; or
 - (C) The transferee is delivering the written certificate to the department with the transfer by law statement; and
- (4) Except for a transfer described in paragraph (1) of the definition of "by operation of law", evidence that notification of the transfer and the intent to file the transfer by law statement has been sent to all persons indicated in the department's files as having an interest, including a security interest, in the vessel.

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

able under the law of this State other than this chapter in connection with the statement or with the acquisition or use of the vessel, the department shall:

- (1) Accept the statement;
- (2) Amend the department's files to reflect the transfer; and
- (3) If the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:
 - (A) Cancel the certificate even if the certificate has not been delivered to the department;
 - (B) Create a new certificate indicating the transferee as owner;
 - (C) Indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and
 - (D) Deliver the new certificate or a record evidencing an electronic certificate.

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

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

- (1) All other requirements under sections -7 and -8 are met;
- (2) The applicant provides an affidavit stating facts showing the applicant is entitled to a transfer of ownership or termination statement;
- (3) The applicant provides the department with satisfactory evidence that notification of the application has been sent to the owner of record and all persons indicated in the department's files as having an interest, including a security interest, in the vessel, at least forty-five days have passed since the notification was sent, and the department has not 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 the department's files, the owner of record may apply for and, by furnishing information satisfactory to the department, obtain a replacement certificate in the name of the owner of record.

(b) An applicant for a replacement certificate of title shall sign the application, and, except as otherwise permitted by the department, the application shall comply with section -7. The application shall include the existing

certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable.

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

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

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

§ -23 Rights of purchaser other than secured party. (a) A buyer in ordinary course of business has the protections afforded by sections 490:2-403(2) and 490:9-320(a) even if an existing certificate of title was not signed and delivered to the buyer or a new certificate listing the buyer as owner of record was not created.

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

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

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

- (1) A buyer of the vessel, other than a person in the business of selling or leasing vessels of that kind, takes free of the security interest if the buyer, acting in good faith and without knowledge of the security interest, gives value and receives possession of the vessel; and
- (2) The security interest is subordinate to a conflicting security interest in the vessel that is perfected under section -15 after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

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

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

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

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

- (1) Whether the department's files indicate, as of a date and time specified by the department, but not a date earlier than three days before the department received the request, any certificate of title, security interest, termination statement, or title brand that relates to a vessel:
 - (A) Identified by a hull identification number designated in the request;
 - (B) Identified by a vessel number designated in the request; or
 - (C) Owned by a person designated in the request; and
- (2) With respect to the vessel:
 - (A) The name and address of any owner as indicated in the department's files or on the certificate of title;
 - (B) The name and address of any secured party as indicated in the department's files or on the certificate, and the effective date of the information;
 - (C) A copy of any termination statement indicated in the department's files and the effective date of the termination statement; and
 - (D) A copy of any certificate of origin, secured party transfer statement, transfer by law statement under section 626-20, and other evidence of previous or current transfers of ownership.

(e) In responding to a request under this section, the department may provide the requested information in any medium. On request, the department shall send the requested information in a record that is self-authenticating under section 626-1, rule 902.

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

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

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

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

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

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

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- (1) The time perfection would have ceased under the law under which the security interest was perfected; or
- (2) Three years after the effective date of this chapter.
- (e) This chapter shall not affect the priority of a security interest in a vessel if immediately before the effective date of this chapter the security interest is enforceable and perfected, and that priority is established.

§ **-29 Rules.** The department may adopt rules in accordance with chapter 91 to effectuate this chapter.”

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

(Approved June 20, 2018.)