

**2013 HOUSE JUDICIARY**

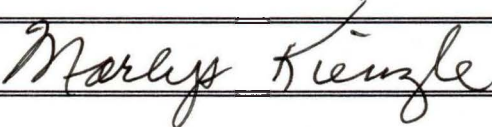
**HCR 3004**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HCR 3004  
Jan 28, 2013  
17812

Conference Committee

Committee Clerk Signature 

**Explanation or reason for introduction of bill/resolution:**

A concurrent resolution directing the Legislative Management to study the Uniform Certificate of Title for Vessels Act.

**Minutes:**

**Chairman K Koppelman:** Opened the meeting for HCR 3004.

**Rep Kretschmar:** Is chairman of the North Dakota Uniform Law Commission, which put this Resolution into Legislature. The Game and Fish Dept. had some questions about Title for Vessels Act and it was decided to put it as an Interim study.

**Rep Karls:** Could you outline what issues the Game and Fish Dept. had?

**Rep Kretschmar:** It pertains to all vessels and they were unsure as to what it would entail.

**Chairman K Koppelman:** Asked if there was a motion or if they should wait for Rep. Klemin

**Rep Maragos:** Made a motion of Do Pass

**Rep Delmore:** Seconded the motion.

11 yeas 0 no 3 Absent Rep Kretschmar is the carrier. It was suggested that it be on the Consent Calendar. The mic was turned off and it was missed and put on the 11<sup>th</sup> Order.

Date: 1-28-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3004

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning	/		Rep. Kathy Hogan		
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HCR 3004: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HCR 3004 was placed on the Eleventh order on the calendar.

**2013 SENATE JUDICIARY**

**HCR 3004**

# 2013 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HCR3004  
3/6/2013  
Job #19488

Conference Committee

Committee Clerk Signature



**Minutes:**

*Written testimony*

**Resolution directing the Legislative Mgmt. to study the Uniform Certificated of Title for Vessels Act**

**Senator David Hogue - Chairman**

Representative Klemin - District 47 - See written testimony. (1)

Senator Grabinger - Relates that he is in the business and does not see a lot of stolen boats and wonders if this is a solution looking for a problem.

Rep. Klemin - States they are not trying to solve a problem; this is a study to see if this is something that should be adopted in ND. He says those that do lending on these types of vessels can gain some type of priority nationwide in respect to vessels that have a certificate of title under a system that has been approved by the Coast Guard.


Close the hearing

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HCR3004  
3/18/2013  
Job #20111

Conference Committee

Committee Clerk Signature 

**Minutes:**

Vote

**Senator David Hogue - Chairman**

Committee work

Senator Grabinger moves a do not pass  
Senator Nelson seconded

Discussion

Committee discusses the passing of Uniform Laws. Senator Armstrong relates his personal story of a sale of a boat without a title. Senator Grabinger relays that all new boats come with a statement of origin and when you register the boat with Game and Fish they give you numbers that you need to put on the boat. The committee discusses the value of boats and thefts.

Vote - 5 yes, 2 no

Motion passes

Senator Nelson will carry

Date: 3-18-13  
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 3004**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By S. Grabinger Seconded By S. Sitte

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue			Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson		X	<u>Sen Hogue</u>		X
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment S. Nelson

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HCR 3004: Judiciary Committee (Sen. Hogue, Chairman) recommends DO NOT PASS**  
**(5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HCR 3004 was placed on the**  
**Fourteenth order on the calendar.**

**2013 TESTIMONY**

**HCR 3004**

TESTIMONY OF REP. LAWRENCE R. KLEMIN  
SENATE JUDICIARY COMMITTEE  
HOUSE CONCURRENT RESOLUTION 3004  
MARCH 6, 2013

HCR 3004 provides for an interim study of the Uniform Certificate of Title for Vessels Act. This new uniform act was approved by the National Uniform Law Commission in 2011. It is intended to deter and impede theft of undocumented vessels. However, issues relating to its adoption in North Dakota and the effect of implementation on the Game and Fish Department and the Department of Transportation should be studied.

Record ownership of vessels in the United States is governed by a composite of state and federal law. Some large commercial vessels must be documented with the United States Coast Guard National Vessel Documentation Center. Some other vessels may, but need not be, documented with the U.S. Coast Guard. Documentation of a vessel with the Coast Guard is a way of identifying the owners of the vessel and is often required by marine lenders as a condition to financing.

Federal law requires that most undocumented vessels equipped with propulsion machinery be issued a number by the state in which the vessel is principally operated. In order to share in certain federal funds, all fifty states and the territories have established boat numbering systems that are approved as complying with the federal requirements.

Although all the states now comply with the federal regulations on the numbering of vessels, there is far less uniformity with respect to state certificate of title laws for undocumented vessels. Thirty-three states and the District of Columbia require certain undocumented vessels to be covered by a certificate of title. Sixteen states (including North Dakota) have no certificate of title law for vessels. And one state, Mississippi, gives the owners of undocumented vessels the option of getting a certificate of title. Even among the states that require a certificate of title for undocumented vessels, the variation in the scope of those laws is substantial.

The principal objectives of the act are to: (i) qualify as a state titling law that the Coast Guard will approve; (ii) facilitate transfers of ownership of a vessel; (iii) deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel; (iv) accommodate existing financing arrangements for vessels; (v) work seamlessly with the Uniform Commercial Code, most notably Articles 2 (sales) and 9 (secured transactions); (vi) manage, to the extent possible, the complications that can arise from a vessel's transition in or out of federal documentation; (vii) provide clear rules on the consequences of compliance or noncompliance; (viii) impose minimal or no new burdens or costs on state titling offices; and (ix) protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty or sinking has caused significant damage to the vessel's hull integrity.

I encourage you to approve HCR 3004 for study during the next interim.

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**WHY STATES SHOULD ADOPT  
THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT**

- The Act facilitates vessel financing because security interests perfected pursuant to the Act should receive the status of a preferred ship mortgage under federal law. Currently, no state certificate of title statute is drafted to achieve this.
- The Act aids consumers and facilitates boating safety by requiring that the title of a vessel be branded if the integrity of the vessel's hull has been compromised.
- The Act integrates seamlessly with the Uniform Commercial Code, particularly Articles 2 and 9. It provides clear rules on all matters relating to a security interest in a vessel.
- The Act deters and impedes theft by providing a simple means of identifying to government officials and interested buyers all those who claim an interest in a vessel.
- The Act imposes few or no new burdens or costs on state titling offices.
- The Act removes or avoids ambiguities found in many state titling laws regarding the effect of the title, the consequence of a failure to title, or the effect of errors on the title certificate.
- The Act is supported by organizations of state administrators, boat financiers, and vessel insurers.



## Certificate of Title for Vessels Act Summary

### State of the Law

Currently, all states and territories have a certificate of title law for motor vehicles. These laws vary only slightly with respect to which motor vehicles are covered and almost all of the laws are based on where the vehicle is principally garaged. As a result, there is no significant overlap or duplication of coverage.

In contrast, only two-thirds of the states and territories have a certificate of title law for boats and other vessels. Moreover, in two discrete ways these statutes vary widely in scope. First, they do not all cover the same types of vessels, each making its own distinctions based on size and propulsion. Second, the statutes vary in whether they are based on where the vessel is principally used, where it is principally moored, or where the owner resides. Consequently, significant gaps and some duplication in coverage exist. The gaps allow for extensive fraud: title to a stolen vessel can be washed by moving the vessel to a new jurisdiction that either has no titling law or has a law that does not cover the vessel at issue.

Several other problems plague the existing titling laws for vessels. First, none was written after the revision of Article 9 of the Uniform Commercial Code, which all states have since enacted, and few of the laws seem to have been written without much attention to the UCC at all. Accordingly, it is often difficult to harmonize a state's titling law with its laws governing sales of vessels and security interests in vessels, and difficult interpretive problems arise.

Second, none of the existing laws has been approved by the U.S. Coast Guard. If such approval were given, security interests perfected under that law would be accorded the status of a preferred ship mortgage under federal law. That in turn would likely facilitate vessel financing.

Third, very few state title laws for vessels provide for the branding of the title of a damaged or salvaged vessel. This means that buyers may unwittingly purchase a vessel that has hidden structural damage and is therefore unseaworthy and unsafe. This is a particular problem after a hurricane or other natural disaster in which many recreational boats are damaged. Owners and insurers often sell the damaged boats for salvage to buyers who make cosmetic repairs and then re-sell the boats without disclosure of the casualty.

### The Uniform Act

The Uniform Certificate of Title for Vessels Act addresses all of these problems.

In general, the act covers all vessels of at least 16 feet in length and all vessels propelled by an engine of at least 10 horsepower. Exceptions exist for seaplanes, amphibious vehicles for which a certificate of title is issued pursuant to a motor vehicle titling act, watercraft that operate only on a permanently fixed, manufactured course, certain houseboats, lifeboats used on another vessel, and watercraft owned by the United States, a state, or a foreign government.

The act applies if the vessel is used principally on the waters of the state. An owner must, within 20 days of becoming an owner or within 20 days of the date the vessel becomes used principally on the waters of the state, apply for a certificate of title. However, no application is required for a federally documented vessel, a foreign documented vessel, a barge, a vessel under construction, or a vessel owned by a dealer.

Like a motor vehicle title, an application must include information about the owner or owners, the vessel, and any secured parties. The application must be accompanied by documentary evidence showing the applicant to be an owner of the vessel. Most of the information in the application will then be put on the certificate, although the owner's social security number or taxpayer identification number will not appear on the certificate. The titling office will maintain its records so that searches

about vessels can be conducted by the vessel's hull identification number, by the vessel number, or by the owner's name.

The act includes a novel branding requirement. If the integrity of a vessel's hull has been compromised by a casualty event, 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." Failure to comply with this rule renders the offender liable for a civil or administrative penalty.

Under the act, a certificate is prima facie – but not conclusive – evidence of the facts appearing on it. Similarly, the act provides that a transferor who complies with the act's rules on transferring title is not 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. Collectively, these rules prevent courts from ignoring real transactions and treating the certificate itself as the only document relevant to actual ownership.

The act includes rules on security interests in vessels, including provisions on choice of law, when and how to perfect through notation on the title certificate, when and how a security interest may be perfected in another manner, how to terminate perfection, and the effect of minor errors in the application or in the certificate. The act also includes rules on the priority of security interests in a vessel. All of these rules are consistent with Article 9 of the Uniform Commercial Code.

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