

UNIFORM CERTIFICATE OF TITLE ACT
(Last Revised or Amended in 2006)

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FOURTEENTH YEAR
PITTSBURGH, PENNSYLVANIA

July 21-28, 2005

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

September 6, 2006

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UNIFORM CERTIFICATE OF TITLE ACT

Prefatory Note

This Uniform Certificate of Title Act (Act) is intended to respond to several principal, though by no means exclusive, factors affecting transfers of interests in motor vehicles: Diversity of state treatment; the increasing use of electronic records, including efforts to reduce and prevent title and other vehicle fraud, and contracting; evolving commercial practices and current legal issues; and the impact of revised Article 9 of the Uniform Commercial Code.

Principal Purposes of the Act

Each year, on the order of 70 million motor vehicles are titled in the United States. While there is almost universal consistency in some industry standards, for example Vehicle Identification Number (VIN) usage, these vehicles are titled by the states under some sixteen different types of systems, virtually none of which is entirely compatible with the others for purposes of information exchange and title interchange. The states also vary in designation of the officials who administer titles and transfers, and collect state taxes, and there are variations in the definitional scope of titling statutes. As with other states' files the move from paper to electronic records is not uniform either within or among the states.

The increasing use of electronic records and contracting practices by public officials, industries, and consumers, has in some transactions rendered the paper certificate of title an anachronism. While some transactions, for example casual sales between individuals and some lending transactions, continue to require the use of paper certificates of title, in many other transactions involving vehicles from manufacture through salvage, none of the governments, manufacturers, financiers, owners/lessees, or others involved need to be denied the convenience or economies of electronic records.

Industry practices have evolved significantly over recent decades, and many of those practices can be accommodated by electronic titling with no adverse impact on either transfers of interests or other statutes and regulations, for example, involving the collection of sales and use taxes, the requirements of safety inspections, and the disclosure of odometer information, which often piggyback on the certificate of title transfer process. Greater uniformity in the core principles governing certificate of title administration and the movement toward electronics will facilitate development of consistent approaches to information and title interchange and discourage fraud. Moreover, the recent revision and nationwide enactment of revised Uniform Commercial Code Article 9 has highlighted some related deficiencies with respect to existing certificate of title laws and regulations.

In addition, as business conditions and practices have evolved, state certificate of title laws that are nonuniform and sometimes outmoded have become inadequate to deal with current and emerging issues. The need for a consistent informational structure and uniform rules dealing

with common title problems has become increasingly apparent.

Responses to these conditions are among the primary purposes of this Act.

Electronic and Paper Titles — Enactment Flexibility

Because of state funding limitations and a variety of other factors it would be unrealistic to expect (in the manner of the recent Article 9 revisions) simultaneous multi-state effectiveness of a statutory certificate of title revision. In addition the states vary greatly in terms of the speed and extent of embracing the movement toward electronics. For these reasons, and because some important uses for paper certificates of title remain, the Act provides for parallel and compatible systems of electronic and paper certificates of title; like revised Article 9, the Act is medium-neutral, but it goes beyond mere neutrality to provide specific alternative and compatible legal structures for electronic and paper certificates of title and transactions, and addresses the relation between them.

Thus, the Act is intended to permit each enacting state the flexibility to adopt electronic titling practices on its own schedule and as available funds allow. The Act is also designed so that no significant transition periods are needed: it provides for simultaneous administration of fully complementary systems of electronic and paper certificates of title. Neither system interferes with the other, and a state could adopt or utilize an electronic title system at any time, or to any extent, or not at all, without disruption. Enactment will allow states with different systems and approaches to technology issues to achieve uniformity in law and information interchange while continuing their administrative and technological diversity. Enactment will facilitate consistency with Article 9, facilitate the interstate exchange of information and transfers of title, help resolve common titling problems, discourage title fraud, and promote greater consistency of titling law with commercial practice, to the benefit of all parties to transfers of interests in vehicles.

Study and Drafting History

In 1955, the Conference promulgated a motor vehicle title act which, although enacted by few states, has influenced the statutes of many. The factors enumerated at the beginning of this Prefatory Note suggested the need for a new look at the potential benefits of an updated uniform effort on this subject by the Conference.

Like all Conference legislative drafting efforts, the appointment of a drafting committee followed several years' work by a study committee, but in this instance the antecedents are even more extensive. For nearly all of the past decade, a Task Force of the Uniform Commercial Code Committee of the Business Law Section of the American Bar Association (ABA) has been devoted to study of the problems and opportunities attendant to certificate of title questions; the ABA Advisor to the Drafting Committee and the Reporter for this Act have been active in the leadership of that effort, and the Drafting Committee is drawing heavily on that ABA work.

To date the Drafting Committee also has been fortunate in the active interest shown by numerous Observers, particularly those who have attended the meetings of the Drafting Committee. These Observers include representatives of manufacturers, importers, dealers, auctioneers, lessors, financiers, title and tag agents, consumers, state titling administrators and authorities, trade associations, the ABA, and various other public and private interests. Particularly important has been the information imparted to the Drafting Committee by these Observers about existing and possible future governmental, administrative, consumer, and industry practices and concerns, in effect describing in detail the commercial, legal, and regulatory context within which the Act must fit.

Matters of Scope

After consideration, it was determined initially that the Act would not attempt to cover watercraft and premanufactured homes, largely due to a need to first resolve basic issues in the context of a specific and limited framework, and because of some perceived fundamental business background differences among the affected industries. However, representatives of segments of both industries have attended Drafting Committee meetings and this question of scope is under continuing evaluation. Also, the Drafting Committee is maintaining communications with regulators and financiers of all product industry segments, with a view to consistency and in recognition of the value of the experience of those parties with respect to certificate of title issues, and also in contemplation of the possibility of expanding the scope at some later date.

Also, after consideration by the leadership of the Conference, the Drafting Committee, and Observers, this draft reflects affirmative determinations to leave substantially as is certain provisions of the existing states' laws. Perhaps most notable in this respect are title branding, which is diverse among the states in both substance and administration, "lemon laws," and laws relating directly to fraudulent activity, which are also diverse and combine local common law and criminal and civil statutory law. This draft requires notation and carry-forward of existing, known title brands, but does not seek to define those requirements.

In light of the diversity, current and probably future, in various states' electronic systems and capabilities and the administration of those systems, the Drafting Committee has attempted to avoid to the extent possible mandating or affecting the technical details of the states' electronic systems, as distinguished from the information legally required to be maintained and furnished by those systems. Compatibility is being attempted as well with systems in use by law enforcement and industry groups. Thus the goal of the draft is uniformity in information interchange and legal results, but not technology or specific operational procedures.

Title Fraud, Odometer Disclosure and the Like — Coordination with Federal and Other State Laws

Under the federal Anti-Car Theft Act of 1992 and the Anti-Car Theft Improvements Act

of 1996, under the responsibility of the Department of Justice, the National Motor Vehicle Title Information System (NMVTIS) is being developed and tested, with information input from the states. In the words of the American Association of Motor Vehicle Administrators:

The Act specifies that the information within NMVTIS shall be available to jurisdictions; federal, state and local law enforcement officials; insurance carriers; and other prospective purchasers (e.g., individuals, auction companies, and used car dealers).

NMVTIS allows jurisdictions to verify the validity of titles prior to issuing new titles. This inhibits title fraud and auto theft by making it harder to title stolen vehicles. Law enforcement officials can get information on any particular vehicle or title, and also are provided access to junk yard and salvage yard information, allowing them to identify illegal activities. The consumer has access to the latest odometer reading and any current or former title brands related to the value and condition of a particular vehicle. This allows consumers to make more informed decisions on whether to buy a vehicle and at what purchase price. Businesses that are prospective purchasers (e.g., dealers or auctions) and insurance carriers also are allowed to get information on a vehicle. This information includes title history, odometer, and brand data, which allows them to make informed decisions on whether to buy or insure the vehicle.

Clearly, states' law enforcement and vehicle title administration agencies will have electronic tie-ins and coordination with NMVTIS, for, among other things, prevention of title and odometer fraud. This Act is intended to enable coordination with, rather than to duplicate, the federal initiative, by providing for state titling practices that are consistent with the federal system.

Odometer disclosure laws, federal and state, are recognized by this Act, which is intended to facilitate a titling system to exist in coordination with those laws. Section 16 of this Act provides for delivery of electronic disclosures to provide information that would be on a written certificate of title.

Focus on Title Issues

Finally, the inherent limitations on the scope of this Act should be noted. It is recognized that not every type of problem involving vehicle sales and finance can be addressed in the Act. The focus of the Act is the legal structure for administration of certificate of title issues, transfers of ownership, and perfection of security interests. The overall purpose is to create a consistent legal structure to facilitate efficient resolution of common titling issues and the efficient handling of title-related transactions. The Act thus focuses on the duties, authority, and responsibilities of title administrators. To purport to resolve every issue that may arise in relationships between the parties to private transactions would be such an expansion of scope as to obscure the basic

purpose of this Act and effectively preclude its uniform enactment. For example, many issues relating to sales contracts, the priority of security interests, and consumer protection are covered by the Uniform Commercial Code or consumer protection laws rather than this Act; similarly, all states have dealer licensing laws, most of which establish administrative structures and regulate some aspects of dealer transactions. The Act does not displace those laws as regards basic contract or tort law, or consumer protection issues.

Nonetheless, by providing for improved administrative rules and remedies governing title issues, creating better and more consistent data flows and information, and providing increased uniformity in the law, the Act will make certificates of title more meaningful and useful for all parties. The resulting increased integrity of the title system will benefit all involved.

In addition to the statutory text and Official Comments, Legislative Notes are provided at appropriate places, to alert legislators and other interested parties to issues and provisions in this Act that may impact other state laws, and therefore may require adjustment of those laws or this Act as part of the enactment process.

UNIFORM CERTIFICATE OF TITLE ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Certificate of Title Act.

SECTION 2. DEFINITIONS.

(a) In this [act]:

(1) “Buyer” means a person that buys or contracts to buy goods.

(2) “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 ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in ordinary course if the sale 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 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 under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under [Uniform Commercial Code Article 2] may be a buyer in ordinary course of business. The term 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. A buyer in ordinary course of business does not lose that status solely because a certificate of title was not executed to the buyer.

(3) “Cancel”, with respect to a certificate of title or a certificate of origin, means to make the certificate ineffective.

(4) “Certificate of origin” means a record created by a manufacturer or importer as the manufacturer’s or importer’s proof of identity of a vehicle.

(5) “Certificate of title”, except in the phrases “certificate of title created by a governmental agency of any state” and “certificate of title created by a governmental agency of any jurisdiction”, means a record, created by the office and designated as a certificate of title by it, that is evidence of ownership of a vehicle.

(6) “Create” means to bring a record into existence by making or

authorizing the record.

(7) “Deliver” means voluntarily to give possession of a record or to transmit it, by any reasonable means, properly addressed and with the cost of delivery provided.

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

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

(10) “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.

(11) “Execute” means to sign and deliver a record on, attached to, accompanying, or logically associated with a certificate of title or certificate of origin to transfer ownership of the vehicle covered by the certificate.

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

(13) “Importer” means a person authorized by a manufacturer to bring into and distribute in the United States new vehicles manufactured outside the United States.

(14) “Lessee in ordinary course of business” means a person that leases goods in good faith, without knowledge that the lease violates the rights of another person, and in ordinary course of business from a person, other than a pawnbroker, in the business of selling or leasing goods of that kind. A person leases in ordinary course if the lease to the person comports with the usual or customary practices in the kind of business in which the lessor is engaged or with the lessor’s own usual and customary practices. A lessee in ordinary course of business may lease for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or a certificate of title covering goods under a preexisting lease contract. Only a lessee that takes possession of the goods or has a right to recover the goods from the lessor under [Uniform Commercial Code Article 2A] may be a lessee in ordinary course of business. A person that acquires goods in bulk or as security for or in total or partial satisfaction of a money

debt is not a lessee in ordinary course of business.

(15) “Lien creditor” means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for the benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(16) “Manufacturer” means a person that manufactures, fabricates, assembles, or completes new vehicles.

(17) “Office” means [insert name of relevant department or agency that creates certificates of title in enacting state].

(18) “Owner” means a person that has legal title to a vehicle.

(19) “Owner of record” means the owner of a vehicle as indicated in the files of the office.

(20) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, federally recognized Indian Tribe, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(21) “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 vehicle.

(22) “Purchaser” means a person that takes by purchase.

(23) “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.

(24) “Secured party” means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is

outstanding;

(B) a person that is a consignor under [Uniform Commercial Code Article 9];

(C) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(D) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or

(E) a person that holds a security interest arising under [Uniform Commercial Code Section 2-401, 2-505, 2-711(3), or 2A-508(5)].

(25) “Secured party of record” means the secured party whose name is provided as the name of the secured party or a representative of the secured party in a security-interest statement that has been received by the office or, if more than one are indicated, the first indicated in the files of the office.

(26) “Security interest” means an interest in a vehicle which secures payment or performance of an obligation. The term includes any interest of a consignor in a vehicle in a transaction that is subject to [Uniform Commercial Code Article 9]. The term does not include the special property interest of a buyer of a vehicle on identification of that vehicle to a contract for sale under [Uniform Commercial Code Section 2-401], but a buyer may also acquire a security interest by complying with [Uniform Commercial Code Article 9]. Except as otherwise provided in [Uniform Commercial Code Section 2-505], the right of a seller or lessor of a vehicle under [Uniform Commercial Code Article 2 or 2A] to retain or acquire possession of the vehicle is not a security interest, but a seller or lessor may also acquire a security interest by complying with [Uniform Commercial Code Article 9]. The retention or reservation of title by a seller of a vehicle notwithstanding shipment or delivery to the buyer under [Uniform Commercial Code Section 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 is determined by law other than this [act].

(27) “Security-interest statement” means:

(A) a record created by a secured party which indicates a security

interest; or

(B) an application for which the office is required to create a certificate of title, if the application indicates a security interest.

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

(A) make or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic sound, symbol, or process.

(29) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(30) “Termination statement” means a record created by a secured party pursuant to Section 27 which:

(A) identifies the security-interest statement to which it relates;

and

(B) indicates that it is a termination statement or that the identified security-interest statement is not effective.

(31) “Title brand” means a designation of previous damage, use, or condition that [this [act] or] law other than this [act] requires to be indicated on a certificate of title or a certificate of origin created by a governmental agency of any jurisdiction.

(32) “Transfer” means to convey, voluntarily or involuntarily, an interest in a vehicle.

(33) “Transferee” means a person that takes by transfer.

(34) “Vehicle” means goods that are any type of motorized, wheeled device of a type in, upon, or by which an individual or property is customarily transported on a road or highway, or a commercial, recreational, travel, or other trailer customarily transported on a road or highway. The term does not include:

(A) an item of specialized mobile equipment not designed primarily for transportation of individuals or property on a road or highway;

- (B) an implement of husbandry; [or]
- (C) a wheelchair or similar device designed for use by an individual having a physical impairment[; or
- (D) a manufactured home].

Legislative note: *The enacting state should compare this definition of “Vehicle” with existing state law to determine if adjustments are needed to conform to other law, as this term may appear in other statutes and affect the scope and application of those statutes.*

(35) “Written certificate of origin” means a certificate of origin consisting of information inscribed on a tangible medium.

(36) “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 [act]:

- (1) “Agreement”, [UCC Section 1-201(b)(3)].
- (2) “Collateral”, [UCC Section 9-102(a)(12)].
- (3) “Debtor”, [UCC Section 9-102(a)(28)].
- (4) “Lease”, [UCC Section 2A-103(a)(j)].
- (5) “Lessee”, [UCC Section 2A-103(1)(n)].
- (6) “Lessor”, [UCC Section 2A-103(a)(p)].
- (7) “Manufactured home”, [UCC Section 9-102(a)(53)].
- (8) “Merchant”, [UCC Section 2-104(1)].
- (9) “Notice; Knowledge”, [UCC Section 1-202].
- (10) “Representative”, [UCC Section 1-201(b)(33)].
- (11) “Sale”, [UCC Section 2-106(1)].
- (12) “Security agreement”, [UCC Section 9-102(a)(73)].
- (13) “Seller”, [UCC Section 2-103(1)(o)].
- (14) “Send”, [UCC Section 1-201(b)(36)].
- (15) “Value”, [UCC Section 1-204].

Legislative Note: *If a state has not enacted the 2002 uniform text of Uniform Commercial Code Articles 1, 2, and 2A, the references to Articles 1, 2, and 2A, section numbers should be adjusted as needed to reflect state law.*

Comment

1. “Buyer in ordinary course of business.” Section 2(a)(2) is consistent with Uniform [Commercial Code] Section 1-201(a)(9).

2. “Certificate of origin.” Section 2(a)(4) recognizes that a certificate of origin is a temporary record that typically describes basic vehicle identification features, such as the vehicle, its manufacturer, and each seller and purchaser during the period between manufacture of the vehicle and creation of the first certificate of title. A certificate of origin may be created or authorized by the manufacturer or, in the case of vehicle manufactured outside the United States, by the importer of the vehicle. The certificate of origin is submitted to the office that creates the first certificate of title and is to be cancelled at that time. *See also* Sections 6-9.

3. “Certificate of title.” The definition at Section 2(a)(5) is similar to those in many state certificate of title laws, in that it recognizes the certificate of title as evidence of ownership. A certificate of title is defined as a “record,” meaning it can be in either paper or electronic form. The definition of “certificate of origin” is similar in this regard. Thus the term “certificate of title” is broad enough to include both electronic and written certificates of title. The term “electronic certificate of title” or “written certificate of title” is used where the reference is limited to one or the other. *See* Section 2(a)(8), (10), (36).

A “certificate of title” governed by this act can only be created by the “office” in this state. *See* Section 2(a)(5), (17). However, “certificate of title created by a governmental agency of any state” means such a record created and designated by the appropriate government agency of any state; and “certificate of title created by a governmental agency of any jurisdiction” means such a record created and designated by the appropriate agency of the jurisdiction, whether or not the jurisdiction is a state. These terms are cumulative: “Jurisdiction” includes any state, and “any state” includes this State.

The definition at Section 2(a)(5) requires a certificate of title to have three basic elements: (1) a record; (2) created or authorized by the appropriate office of this State; (3) evidencing ownership of a vehicle. Although a certificate of title is evidence of ownership, it is not necessarily conclusive evidence. *See, e.g., Seward County v. Hauck*, 2003 WL 21211373 (Nebr. App. May 27, 2003) (unpublished) (certificate of title obtained by theft was not effective). *See also*: Section 10 (regarding cancellation); Sections 16-19 (rights of transferees); [Uniform Commercial Code] Sections 2-403, 9-316(d) and (e), and 9-337. *Compare Volvo v. McClellan*, 69 P.3d 274 (Okla. Ct. App. 2003) (improper lien foreclosure was sufficient to transfer ownership to an innocent purchaser). *Volvo* is consistent with Section 19(b), and [Uniform Commercial Code] Section 9-337.

The definition of “certificate of title” is different from [Uniform Commercial Code] Article 9 Section 9-102(a)(10) in some important ways. The [Uniform Commercial Code] Article 9 definition incorporates by reference certain standards that a state law must meet in order

to be the applicable certificate of title law for purposes of [Uniform Commercial Code Article 9]. See [Uniform Commercial Code] Sections 9-303 and 9-311(a). This act is that certificate of title law, and therefore cannot directly use the [Uniform Commercial Code Article 9] incorporation-by-reference approach. This act satisfies the [Uniform Commercial Code Article 9] requirements, rather than merely restating them. As discussed below, these requirements are met in this act at Sections 2(a)(5) and (10), 11(a)(2), and 14(b) and (c), as well as Sections 25 and 26, providing for perfection of security interests pursuant to this act; there is no need for these provisions or the requirements of [Uniform Commercial Code Article 9] to be restated in the definition at Section 2(a)(5).

The [Uniform Commercial Code Article 9] definition at Section 9-102(a)(10) requires a “certificate,” but does not define that term or require a written certificate. The provisions of this act providing for written and electronic certificates of title are consistent with the [Uniform Commercial Code Article 9] definition.

The [Uniform Commercial Code Article 9] definition at Section 9-102(a)(10), and the Section 9-311(a)(2) and (3) deference to an applicable certificate of title perfection system, [Uniform Commercial Code] require a certificate of title statute providing for security interests to be indicated on the certificate as a condition or result of perfection or priority over a lien creditor. Section 11(a)(2) of this act requires that the office indicate the security interest on the certificate of title. Section 2(a)(5) and (10) provide that an electronic certificate of title is maintained entirely in files created by the office, and Section 14(b) and (c) require the office to indicate security interests in those files. Section 19(e) provides that a security interest is indicated on the electronic certificate of title if it is indicated in the files of the office. These provisions satisfy the [Uniform Commercial Code Article 9] requirement for a certificate of title statute that provides for indication of security interests on the certificate of title.

In addition, Sections 25 and 26 of this act provide the mechanisms for perfection of the security interest. This act uses the term “perfection” as that term is used in [Uniform Commercial Code Article 9]. Perfection under Sections 25 and 26 satisfies the requirements for perfection under [Uniform Commercial Code Article 9] Sections 9-310 and 9-311(a) and (b). The consequences of that perfection, including priority, are determined under [Uniform Commercial Code Article 9], as well as Sections 18 and 19 of this act. Thus, for example, a security interest perfected under Sections 25 and 26 is entitled to priority over a subsequent lien creditor pursuant to [Uniform Commercial Code Article 9] Section 9-317.

[Uniform Commercial Code Article 9] Sections 9-102(a)(10) and 9-311(a)(2) and (3) require that the certificate of title statute provide for the security interest to be indicated on the certificate as a condition or result of perfection or priority. Under this act, indication on the certificate of title is not a condition to perfection or priority; the security interest may be perfected and have priority by reason of the secured party’s compliance with the requirements of Sections 25 and 26. Under these sections the requisite condition to perfection is proper receipt by the office of a security-interest statement. This provides priority over a subsequent lien

creditor, pursuant to [Uniform Commercial Code Article 9] section 9-317. As a result of this perfection, this act provides for the security interest to be indicated on the certificate of title, either by indication in files of the office constituting an electronic certificate of title or upon subsequent submission of an application for a written certificate of title. Perfection under Sections 25 and 26 does not require prior indication on a written certificate of title, but will result in such indication in the course of processing by the office of a subsequent application for a written certificate of title. Thus, this act provides for indication on the certificate of title as a result of perfection and priority over a lien creditor, in accordance with [Uniform Commercial Code Article 9] Sections 9-102(a)(10) and 9-311(a)(1) and (2), even though such indication is not a prerequisite to perfection and priority. This is consistent with established law in many jurisdictions, and the equivalent procedure in [Uniform Commercial Code Article 9] (*see* Section 9-516(a)), in that perfection of security interests occurs upon receipt by the office of the proper documentation.

Pursuant to Sections 9 and 11(d), the certificate of title must provide for reassignment of the certificate of title by execution of the certificate of title, including dealer reassignments and secured powers of attorney, *e.g.*, by execution of a form that is part of the certificate of title. *See also* the definition of “execute,” at Section 2(a)(11).

4. “Create.” Section 2(a)(6) defines what it means to “create” a certificate of title. This definition relates to other definitions and provisions of this act. *See, e.g.*: the definitions of “Electronic certificate of title” and “Written certificate of title,” Sections 2(a)(10) and (36); and Section 10 (obligation of the office to create a certificate of title). A certificate of title can be created by the office making a file that constitutes an electronic certificate of title pursuant to Sections 9, 10, and 11, or by creating a written certificate of title pursuant to those sections.

5. “Deliver.” Section 3(a)(7) defines “deliver” to mean a transfer of possession of a record; as used in this context the meaning and context of the term “transfer” are different from the definition of “Transfer” at Section 2(a)(32), which refers to conveyance of an interest in a vehicle. Payment by the transferee for the cost of delivery constitutes “the cost of delivery provided” and meets the definition of deliver. In the case of an electronic record, “deliver” means the transmission by electronic means to the electronic mail address of the recipient.

6. “Electronic certificate of title.” Under Section 2(a)(9), “electronic certificate of title” designates a certificate of title that meets all requirements in the definition of a certificate of title and is only in electronic form. *See also* Sections 11 and 14 (distinguishing between a certificate of title and other information in the files of the office). This definition is modeled somewhat on the [Uniform Commercial Code Article 9] definition of “Electronic chattel paper” at Section 9-102(a)(31). The general purpose is to create a parallel system for electronic certificates of title, somewhat like that for electronic chattel paper in [Uniform Commercial Code Article 9]. Under Section 2(a)(9), an electronic certificate of title can be created only if any existing written certificate of title is cancelled; this recognizes the traditional primacy of a written certificate of title if one exists. The result is that some provisions apply only to written certificates of title,

some apply only to electronic certificates of title, and some apply to both. *See, e.g.*, Sections 16, 18, 19, 20-23; and the definition of “written certificate of title” at Section 2(a)(36).

7. “Execute.” The definition of “execute” at Section 2(a)(11) denotes only the execution of a certificate of title or certificate of origin.

8. “Lessee in ordinary course of business”; “Lien creditor.” The definitions of “Lessee in ordinary course of business” at Section 2(a)(14) and “Lien creditor” at Section 2(a)(15) are taken largely from [Uniform Commercial Code] Sections 2A-103(1)(u) and 9-102(a)(52), for purposes of consistency with the [Uniform Commercial Code].

9. “Manufacturer.” The definition of “Manufacturer” at Section 2(a)(16) includes a later-stage manufacturer, *e.g.*, a manufacturer that completes vehicles by installing or modifying vehicle body on a chassis manufactured by another manufacturer.

10. “Owner.” The definition of “Owner” at Section 2(a)(18) means a person with ownership of an interest in the legal title to a vehicle. It does not include an equitable or beneficial ownership interest. An owner has an ownership interest in the vehicle. If there are multiple ownership interests, the term “owner” can include any or all such interests.

11. “Person.” The definition of “Person” at Section 2(a)(20) is derived from [Uniform Commercial Code Article 1] Section 1-201(b)(27), for purposes of consistency with the [Uniform Commercial Code]. The list is illustrative, not exclusive. “Other legal entity” includes things not specifically listed, such as the trustee of a statutory trust.

12. “Purchase”; “Purchaser.” The definition of “Purchase” at Section 2(a)(21) is adapted from [Uniform Commercial Code] Section 1-201(b)(29), for purposes of consistency; *see also* Section 1-201(32) of old Article 1. Some parts of the [Uniform Commercial Code] definition are directed at purchases of instruments or investment securities or the like, and are not applicable to vehicles, *e.g.*, the words “discount,” “negotiation,” and “issue or reissue.” The [Uniform Commercial Code] language is included in this act as applicable, for purposes of consistency with the [Uniform Commercial Code]. The definition of “Purchaser” at Section 2(a)(22) is similarly adapted from [Uniform Commercial Code] Section 1-201(b)(30), for purposes of consistency with the [Uniform Commercial Code].

13. “Secured party”; “Secured party of record”; “Security interest.” The definitions of “Secured party” and “Security interest” at Sections 3(a)(24) and (26) are similar to those in [Uniform Commercial Code Article 9]. “Secured party of record” means not only a secured party shown in the files of the office, but the first one so indicated if there is more than one.

14. “Security-interest statement” is the record delivered to the office pursuant to Section 25, to perfect a security interest under Section 26 and Article 9. Under prior law in many states this was required to be in writing and was called a “lien entry form.”

This act provides for perfection of a security interest on receipt by the office of a security-interest statement, subject to the additional UCC Article 9 requirements, even if the security interest is not otherwise indicated on a certificate of title or the office never receives an application for a certificate of title. *See* Sections 25, and 26. This is consistent with [Uniform Commercial Code Article 9] Sections 102(a)(10) and 9-311(a)(2), because perfection occurs pursuant to a statute providing for the security interest to be indicated on the certificate of title. This act must provide for such perfection, in order to meet the requirements for a certificate of title under [Uniform Commercial Code Article 9], while [Uniform Commercial Code Article 9] simply references such perfection at Sections 9-102(a)(10) and 9-311(a). Note that [Uniform Commercial Code Article 9] Section 9-311(a)(3), requiring that a certificate of title created by another jurisdiction be created pursuant to a law providing for indication on the certificate as a condition or result of priority, does not require the applicable certificate of title law to include priority rules; the applicable priority rules are in [Uniform Commercial Code Article 9], and the certificate of title law merely needs to provide for perfection so that priority can result under [Uniform Commercial Code Article 9]. Therefore, receipt by the office of a security-interest statement pursuant to Section 25 creates a basis for perfection under Section 26 and [Uniform Commercial Code Article 9] and triggers application of this Act pursuant to Section 26 and [Uniform Commercial Code Article 9] Section 9-311(a), even if there is no certificate of title and no other record covering the vehicle in the files of the office. This satisfies the requirements of [Uniform Commercial Code Article 9] section 9-311(a)(2), as the vehicle is subject to perfection under this Act and this Act qualifies as a certificate of title statute under Section 9-102(a)(10) and 9-311(a)(2). This also constitutes perfection under the law of another state pursuant to that states [Uniform Commercial Code Article 9] Section 9-311(a)(3). As a result no [Uniform Commercial Code Article 9] filing is needed and perfection under Section 26 of this [act] is perfection for purposes of [Uniform Commercial Code Article 9], even if the office never creates a certificate of title. If any state creates a certificate of title, the choice of law rules of Section 4 of this [act] and [Uniform Commercial Code Article 9] Section 9-303 apply.

15. “Sign.” This definition is derived from the [Uniform Commercial Code] and the Uniform Electronic Transactions Act (UETA) and includes authentication of an electronic record. The definition of “Sign” at Section 2(a)(28) is derived from the definition of “signed” in [Uniform Commercial Code] Section 1-201(b)(37) and the definition of “electronic signature” in the UETA Section 3(8). It is intended to encompass both electronic and written signatures.

16. “Termination statement.” Section 2(a)(30) relates to the termination of a security-interest statement under Section 27. This serves the same function as in [Uniform Commercial Code Article 9], to denote that perfection of a security interest has been terminated. *See* Sections 23, 27, [Uniform Commercial Code] Section 9-513. This act adopts an “open drawer” system for security-interest statements and termination statements, as in [Uniform Commercial Code Article 9]: all such statements become part of the office file, with the effect to be individually considered for each issue that may arise. In addition, the debtor can terminate a security-interest statement in limited circumstances under Section 23 of this [act]. *See also* Sections 25 and 26 (perfection of security interests).

17. “Title brand.” This act does not determine what constitutes a title brand. This is determined under other law. Once a title brand is created, under the law of any jurisdiction requiring it to be indicated on a certificate of title, that title brand must be indicated on a certificate of title created by the office. *See* Section 11.

18. “Transfer”; “Transferee.” The terms “Transfer” and “Transferee” at Section 2(a)(32) and (33) denote any conveyance of an interest, whether voluntary or by operation of law, in contrast to a “purchase,” which denotes a voluntary conveyance. Again this distinction is drawn from the [Uniform Commercial Code]

19. “Vehicle.” “Specialized mobile equipment” is not a vehicle. “Specialized mobile equipment,” as that term is used in Section 2(a)(34)(A), includes off-road motorized vehicles whose use of the roadway is only incidental to their off-road purpose, *i.e.*, mobile equipment not designed primarily for the transportation of individuals or property upon a road or highway and only incidentally operated or moved over a road or highway, including: motorized vehicles designed exclusively for off-road use; ditch digging apparatus; well-boring apparatus; construction equipment; road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carry-alls and scrapers, power shovels, and drag lines; self-propelled cranes; and earth-moving equipment. “Specialized mobile equipment” also includes consumer goods such as golf carts, “go-karts,” and devices designed for transport on sidewalks, inside the home, or in and around facilities such as shopping malls, amusement parks, and other commercial buildings (*e.g.*, “Segways”). Specialized mobile equipment does not include a house trailer (which is not vehicle), or dump trucks, truck-mounted transit mixers, truck-mounted cranes and shovels, or other mobile equipment mounted on vehicles designed for transport of individuals or property on a roadway. Vehicles designed for transport on a roadway are not specialized mobile equipment, and are therefore vehicles under this act.

A bicycle is not a vehicle because it is not motorized. Motorized bicycles, motor scooters, and motorcycles are vehicles and may be covered by a certificate of title pursuant to this act.

Although not a definition, in [Uniform Commercial Code Article 9] “Location of debtor” is governed by Section 9-307. For purposes of this act, the location of the debtor is determined under [Uniform Commercial Code] Section 9-307.

20. Two other fundamental purposes are evident in the definitions: (1) Allowing purely electronic certificates of title and origin and related documentation (with a tiered option provided at Sections 9, 10, 11, and 15 to allow certain persons to request a written certificate); and (2) allowing transactions relating to written certificates of title and origin to be conducted electronically (*e.g.*, executing certificates of title and origin, and perfection of security interests under Sections 25 and 26). Thus electronic records may be used to effectuate electronic

transactions, and also certain transactions that involve written certificates of title. *See, e.g.*, Section 16.

21. This act permits the filing of written and electronic security-interest statements to perfect security interests (Sections 25 and 26), in some circumstances even if there has not been an application for a certificate of title. If a certificate of title has been created in another state, or is subsequently created in another state, the receipt by the office of a security-interest statement pursuant to Sections 25 and 26 will not constitute perfection because the law of this State will not apply under Section 4 and [Uniform Commercial Code] Section 9-303. However, if a certificate of title has not been created in any state, and the law of this State applies under Section 4(e) or this state's choice of law principles, the office may receive a security-interest statement under Sections 25 and 26 and this will constitute perfection. If the office subsequently receives an application for a certificate of title, the perfected security interest will be indicated on the certificate. If an application for a certificate of title is made in another state, the law of that state will apply pursuant to Section 4 and [Uniform Commercial Code] Section 9-303. This act also permits written and electronic documentation of other records, such as title transfers, divorce decrees, leases, corporate mergers, and security agreements, and communications such as title searches, with or without a certificate of title, based on the procedures, discretion, budget, and files of the office. *See, e.g.*, Sections 13 and 14, and Sections 21-24. The official records of the office are designated "files," to avoid confusion with the defined term "record."

Thus, "certificate of title" means any form of "record" meeting the requirements for a certificate of title, and can mean either a written or electronic certificate of title. An electronic certificate of title is a certificate of title being maintained solely in electronic form, in the files of the office; a written certificate of title is one that exists solely in written form. If the office creates a written certificate of title, the files of the office cannot constitute an electronic certificate of title; there can be only one certificate of title at a time. *See, e.g.*, Section 15(c). Note again that, unless stated otherwise (as in Section 4(a)), "certificate of title" means one created by the office in this State.

SECTION 3. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY. Unless displaced by this act, the principles of law and equity supplement its provisions.

Comment

1. This section is consistent with [Uniform Commercial Code] Section 1-103(b). In addition, like the [Uniform Commercial Code], this act should be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) to simplify, clarify, and modernize the law governing certificates of title;
- (2) to permit the continued expansion of commercial practices through

custom, usage, and agreement of the parties; and

- (3) to make uniform the law among the various jurisdictions.

SECTION 4. LAW GOVERNING VEHICLE COVERED BY CERTIFICATE OF TITLE OR CERTIFICATE OF ORIGIN.

(a) In this section, “certificate of title” means a certificate of title created by a governmental agency of any state.

(b) The local law of the state under whose certificate of title a vehicle is covered governs all issues relating to the certificate of title, from the time the vehicle becomes covered by the certificate of title until the vehicle ceases to be covered by the certificate of title, even if no other relationship exists between the state and the vehicle or its owner.

(c) A vehicle becomes covered by a certificate of title created in this State when an application for a certificate of title and the fee are received by the office in accordance with this act. A vehicle becomes covered by a certificate of title in another state when an application for a certificate of title and the fee are received in that state pursuant to the law of that state.

(d) A vehicle ceases to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the state pursuant to which it was created or the time the vehicle becomes covered subsequently by another certificate of title.

(e) If a vehicle is not covered by a certificate of title but a certificate of origin has been created for the vehicle:

- (1) if the parties to the certificate of origin have chosen the law of a jurisdiction, the law of that jurisdiction applies to the certificate of origin, even if there is no other relationship between that jurisdiction and the vehicle or its owner; and

- (2) in the absence of an agreement effective under paragraph (1), the rights and obligations of the parties are determined by the law that would apply under this state’s choice-of-law principles.

Comment

1. Subsections (b) and (c) are derived from [Uniform Commercial Code] Section 9-303. Because of the close relation between this act and the [Uniform Commercial Code], a purpose of

this act is to conform to and avoid conflicts with the [Uniform Commercial Code]. This act governs matters relating to ownership of vehicles and perfection of security interests in vehicles (*see* Sections 25-26); this act also governs some priority issues (*see* Sections 18, 19, 20). [Uniform Commercial Code Article 9] governs security interest issues involving attachment, priority, and enforcement. The scope of Article 9 with respect to vehicles covered by this act is governed by Sections 9-109, 9-303, and 9-311.

The language in this act that is derived from [Uniform Commercial Code] Section 9-303 has been revised in subsections 4(b) and (c) to limit the application of this act to “vehicles” (as defined in Section 3(a)(34)) rather than applying to “goods” as in [Uniform Commercial Code] Section 9-303. This reflects the limitation of this act to vehicles. *See, e.g.*, subsections 2(a)(4), (5), (18), and (34), and Sections 9-11, and 15. Other deviations from [Uniform Commercial Code] Section 9-303 were also necessary, but the language of subsections 4(b) and (c) tracks [Uniform Commercial Code] Section 9-303 as closely as possible.

2. As a result of the definitions at Section 3, and the scope and choice of law provisions at Section 4, this act applies to any “vehicle” that is “covered” by a “certificate of title” “created” by the office in this State. As noted below, this act may also apply to a vehicle for which no certificate of title has been created. If the vehicle is not covered by a certificate of title, an agreement otherwise effective under subsection 4(e)(1) is not effective to the extent that application of the law of the chosen jurisdiction would be contrary to a fundamental policy of the jurisdiction whose law would govern under subsection 4(e)(2). In the absence of an agreement that is effective under subsection 4(e)(1), if a vehicle is not covered by a certificate of title and a certificate of origin has not been created for the vehicle, the rights and obligations of the parties with an interest in the vehicle are determined by the law that would be selected by application of this state’s conflict-of-laws principles.

3. Thus a transaction involving a vehicle may be governed by this act even though no certificate of title has been created. For example, the office may assemble and maintain files indicating information about a vehicle, under Sections 13 and 14, without creating a certificate of title or receiving an application for a certificate of title. In addition, the office may receive a security-interest statement pursuant to Section 25, and thereby allow perfection of a security interest pursuant to Section 26, if there is no certificate of title created by a governmental agency of any state that triggers a contrary choice of law under Section 4 of this act and [Uniform Commercial Code] Section 9-303. Section 4 is designed to be consistent with Section 9-303 in this respect. For example, if the vehicle is registered only with an Indian tribe in this State, and that tribe does not have a certificate of title statute within the meaning of Article 9 Sections 9-102(a)(10), and 9-311(a)(3), the vehicle is not covered by a certificate of title under Section 4 and Section 9-303, and can be brought within the scope of this act by receipt of a security-interest statement under Section 25, pursuant to subsection 4(e). This would constitute perfection under Section 26. *See also* [Uniform Commercial Code] Section 9-311(a)(2) ([Uniform Commercial Code] deference to state certificate of title statute).

4. A vehicle becomes covered by a certificate of title created in another state when an application and any required fees are delivered to the appropriate titling authority in that state. In this state, a vehicle becomes covered by a certificate of title created by the office when an application and any required fees are delivered to the office in accordance with the requirements of this act. *See* Sections 9 and 10, [Uniform Commercial Code] Section 9-303. At that time this act will apply to all issues relating to the certificate of title or otherwise governed by this act. *See also* Sections 25, 26, and 27 regarding the effect and termination of a security-interest statement. The priority of the security interest would be determined under the [Uniform Commercial Code]. *See, e.g.*, [Uniform Commercial Code] Sections 9-317, 9-322, 9-337.

Definitional Cross Reference:

“Certificate of title.” Section 3(a)(5).

“Security-interest Statement.” Section 3(a)(27).

SECTION 5. EXCLUSIONS. Unless the vehicle is covered by a certificate of title, this act does not apply to a vehicle owned by the United States, a state, or a foreign government, or a political subdivision of any of them.

Comment

1. This section is derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955 (UMVCT Act) Section 2. UMVCT Act Section 2 additionally provides specific exclusions for construction equipment, farm equipment, golf carts, boat trailers, and the like. These have been removed from Section 5 of this [act], as redundant in view of the definition of “vehicle” at Section 2(a)(34).

2. Note that the term “State” is defined at Section 2(a)(29) and includes, *e.g.*, federally recognized Indian tribes.

SECTION 6. VEHICLE IDENTIFICATION NUMBER, MAKE, AND MODEL YEAR. For a vehicle covered by a certificate of title, the office shall indicate in its files the vehicle identification number, make, and model year, if any, assigned by its chassis manufacturer or importer. If a vehicle identification number, make, or model year has not been assigned, the office shall assign a vehicle identification number, make, or model year and indicate the assignment in its files.

Comment

1. The standards governing vehicle identification numbers, as reflected on certificates of origin and certificates of title, are derived from industry and title administrator practices. Departure from these practices could be a basis for objection by a purchaser or the office under law other than this act. *See, e.g.*, [Uniform Commercial Code] Section 1-303 (2002 uniform text) (old [Uniform Commercial Code] Section 1-205). A purpose of this act is to provide legal principles consistent with these practices.

SECTION 7. EXECUTION OF CERTIFICATE OF ORIGIN.

(a) If a manufacturer or importer creates or is authorized or required to create a certificate of origin for a vehicle, upon transfer of ownership of the vehicle, the manufacturer or importer shall execute a certificate of origin to the transferee or deliver a signed certificate of origin to the office. Each succeeding transferor shall execute to the next transferee or sign and deliver to the office all certificates of origin covering the vehicle which are known to the transferor.

(b) If a certificate of title created by a governmental agency of any jurisdiction is not delivered to the buyer and a written certificate of origin or equivalent evidence of ownership is required by the office to obtain a certificate of title, a buyer may require that the buyer's transferor execute to the buyer a written certificate of origin or provide equivalent evidence of ownership sufficient to satisfy the requirements of the office.

Comment

1. This section allows creation of a certificate of origin by a third party (*e.g.*, a dealer or importer) upon authorization by the manufacturer or importer. It also requires each transferor to execute any outstanding certificates of origin to the transferee.

2. *See* Section 4(e) for the choice of law rules that determine whether this act applies to a certificate of origin.

3. "Later stage manufacturer" is a term sometimes used to describe a purchaser to which ownership of vehicle is transferred for further manufacture, including fabrication, assembly, or other completion. A later stage manufacturer is within the definition of "manufacturer" at Section 2(a)(16), *e.g.*, as that term is used in Section 7(a).

4. Under this section, if a manufacturer or importer of a new vehicle sells vehicle to a later stage manufacturer, the selling manufacturer or importer is required to execute to the later stage manufacturer any known certificate of origin covering the vehicle or required to be created by agreement or under other law. If a later stage manufacturer transfers ownership of the vehicle

to another later stage manufacturer or to a dealer, distributor, or other buyer, the seller is similarly required to execute all known certificates of origin to the buyer.

5. If a dealer, distributor, or other buyer transfers ownership of a new vehicle after manufacture by a later stage manufacturer, the seller is again required execute to the next buyer all known certificates of origin covering the vehicle. Thus, Section 7 accommodates a multiple-step manufacturing and sales process (*e.g.*, transfers between an initial manufacturer and possibly multiple subsequent manufacturers, dealers, etc., plus a sale by a dealer to the end-user) involving certificates of origin.

6. A buyer may apply for a certificate of title under Section 9 or, as applicable, Section 23.

Definitional Cross Reference:

“Buyer.” Section 3(a)(1).

“Create.” Section 3(a)(6).

“Deliver.” Section 3(a)(7).

“Execute.” Section 3(a)(11).

“Sign.” Section 3(a)(26).

“Transfer.” Section 3(a)(32).

“Transferee.” Section 3(a)(33).

SECTION 8. CANCELLATION AND REPLACEMENT OF CERTIFICATE OF ORIGIN.

(a) If a written certificate of origin is created to replace an electronic certificate of origin, the electronic certificate of origin is canceled and replaced by the written certificate of origin.

(b) If an electronic certificate of origin is created to replace a written certificate of origin, the written certificate of origin must be canceled.

Comment

1. *See also* Section 15(c) (cancellation of certificate of title), for a parallel rule governing

certificates of title, and Section 10. If there is a written certificate of origin, and a replacement electronic certificate of origin is to be created, the written certificate of origin must be canceled. *See* Section 2(a)(9) (electronic certificate of origin must exist solely in electronic form). There is a similar rule for certificates of title. *See* Section 3(a)(10), and Section 15(c). Similarly, if an electronic certificate of origin is to be replaced by a written certificate of origin, the electronic certificate must be cancelled. A certificate of origin, like a certificate of title, can only exist in one form at a time. However, unlike a certificate of title, there can be more than one certificate of origin covering a vehicle. *See* Section 7.

2. Subsection (a) provides that upon creation of a replacement written certificate of origin, any replaced electronic certificate of origin automatically ceases to constitute a certificate of origin and becomes merely data in the files of the office. In contrast, under subsection (b) an affirmative act of cancellation is required to render a written certificate of origin ineffective. *See also* Section 2(a)(3).

SECTION 9. APPLICATION FOR CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Sections 21 and 22, only the owner of a vehicle may apply for a certificate of title covering the vehicle.

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

- (1) the applicant's name, street address, and, if different, address for receiving first class mail delivered by the United States Postal Service;
- (2) the vehicle identification number;
- (3) a description of the vehicle including, as required by the office, the make, model, model year, and body type;
- (4) an indication of all security interests in the vehicle known to the applicant, including the name and mailing address of the secured party or a representative of the secured party, and, if the application includes a direction to terminate a security-interest statement, the information required for sufficiency of a security-interest statement under Section 25(a) and the secured party's or its representative's name and address for receiving communications;
- (5) any title brand known to the applicant and, if known, the jurisdiction whose governmental agency created the title brand;
- (6) if law other than this act requires that an odometer reading be provided

by the transferor upon transfer of ownership of the vehicle, a signed record disclosing the vehicle's odometer reading; and

(7) if the application is made in connection with a transfer of ownership, the transferor's name, physical address and, if different, address for receiving first class mail delivered by the United States Postal Service, the sales price if any, and the date of the transfer.

(c) A certificate of title created in another jurisdiction and submitted in connection with an application is part of the application.

(d) In addition to the information required in subsection (b), an application for a certificate of title may contain electronic communication addresses of the owner and the transferor.

(e) Except as otherwise provided in Section 21, 22, or 23, if an application for a certificate of title includes an indication of a transfer of ownership, the application must be accompanied by all existing certificates of origin and any certificate of title created by a governmental agency of any jurisdiction covering the vehicle, which have been executed to the applicant or are known to the applicant. Except as otherwise provided in Section 23, if an application includes a direction to terminate a security-interest statement, the application must be accompanied by a termination statement.

(f) Except as otherwise provided in Section 24, if an application for a certificate of title does not include an indication of a transfer of ownership or a direction to terminate a security-interest statement, the application must be accompanied by all existing certificates of origin and any certificate of title created by a governmental agency of any jurisdiction covering the vehicle, which are known to the applicant and evidencing the applicant as owner of the vehicle.

(g) If the applicant does not know of any existing certificate of origin or certificate of title created by a governmental agency of any jurisdiction covering the vehicle, the applicant shall include in the application for a certificate of title all existing records and other information of the vehicle's ownership known to the applicant. Information submitted under this subsection is part of the application for the certificate of title and must be indicated in the files of the office.

(h) The office may require that an application for a certificate of title or a security-interest statement be accompanied by payment of all taxes and fees payable by the applicant under the law of this state in connection with the acquisition or use of a vehicle or evidence of payment of the tax or fee.

Comment

1. Only the owner of the vehicle may be the applicant under Section 9. Normally this will be a transferee applying to become the owner of record. Thus the applicant will be the owner but not yet the owner of record. The applicant's name need not be precise or determined in accordance with [Uniform Commercial Code] Section 9-503. The effect of errors or omissions is governed by Section 20.

A power of attorney, (including a simple power of attorney, as distinguished from a durable power of attorney or other specialized form) may be used to meet the requirements of this section. An agent may act for the owner, and the owner will be bound to the same extent a represented person is bound by the act of a representative under the law of agency. *See* Section 3.

2. This section provides the basic requirements for an application for a certificate of title. It is supplemented by Sections 16-24, which provide separate requirements for certain specified circumstances, *e.g.*, an application for a replacement certificate of title may be made under Section 24 when the previous certificate of title has been lost, stolen, or destroyed.

3. The office may request additional information not specified in this section, such as the sales price, for taxation or other purposes, but the accuracy or lack of this additional information does not affect the validity of the application for a certificate of title. *See also* Section 10.

4. The information required under subsection (b)(3) is to be determined by the office. The office can vary this requirement by requiring more information of this type, or less, as appropriate in this State. Subsection (b)(3) states the customary requirement in many jurisdictions.

5. The purpose of subsection (b)(6) is to recognize the requirements of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. Section 1988, as implemented by the National Highway Traffic Safety Administration (NHTSA) at 49 C.F.R. Part 580 (Odometer Disclosure Requirements). This federal odometer mileage disclosure law requires certain vehicle mileage disclosures to be made upon transfer of title to vehicle. *See, e.g.*, 49 C.F.R. Section 580.5. At this time, the disclosures must be made "in writing" on the certificate of title or other document being used to transfer ownership. *Id.*

It is not necessary for this act to restate or specifically incorporate these federal law

requirements, which may change over time. However, this general reference to those requirements may be helpful in alerting interested parties to the federal requirements. That is the purpose of subsection (b)(6).

6. There has been some uncertainty about the impact of the federal requirement that the disclosures be “in writing,” *see, e.g.*, 49 C.F.R. Section 580.5(c), particularly as regards electronic certificates of title. The NHTSA has indicated that an electronic disclosure containing the proper information may satisfy the federal written disclosure requirement at 49 C.F.R. Section 580.7 for a lessee-to-lessor transfer. This requirement is similar but not identical to the written disclosure requirement for other transfers, *e.g.*, at 49 C.F.R. Section 580.5, and therefore may provide some indication relevant to whether an electronic disclosure could satisfy the federal requirement for a “writing.” *See* letter to Edwin E. Huddleson, II, General Counsel, American Automobile Leasing Association, from Jacqueline Glassman, Chief Counsel, National Highway Traffic Safety Administration (April 25, 2003). Electronic disclosure is consistent with the federal Electronic Signatures in Global and National Commerce Act (ESIGN), Pub. L. 106-229 (June 30, 2000), codified at 15 U.S.C. §§ 7001 *et seq.*

Thus it is possible that in the future transactions involving electronic certificates of title will be executed entirely by electronic means, including the federal odometer mileage disclosures required under 49 C.F.R. Part 580.

SECTION 10. CREATION AND CANCELLATION OF CERTIFICATE OF TITLE.

(a) Unless an application for a certificate of title is rejected under subsection (c), the office shall create a certificate of title upon receipt of an application that complies with Section 9 and payment of all taxes and fees.

(b) Upon request of the secured party of record, the office shall create a written certificate of title or, if the office is authorized to do so, an electronic certificate of title. If no security interest is indicated in the files of the office, the owner of record may have the office create a written certificate of title or, if the office is authorized to do so, an electronic certificate of title. If no request is made by an owner of record or secured party, the office may create a written certificate of title or, if authorized to do so, an electronic certificate of title.

(c) The office may reject an application for a certificate of title only if:

- (1) the application does not comply with Section 9;
- (2) there is a reasonable basis for concluding that the application is fraudulent or would facilitate a fraudulent or illegal act; or

(3) the application does not comply with law of this state other than this act.

(d) If the office has created a certificate of title, it may cancel the certificate of title only if it could have rejected the application under subsection (c) or is required to cancel the certificate of title under another provision of this act. [The office shall provide an opportunity for a hearing at which the applicant and any other interested party may present evidence in support of or opposition to the cancellation. The office shall serve the notice of the opportunity in person or send it by first class mail delivered by the United States Postal Service to the applicant, the owner of record, and all secured parties indicated in the files of the office. If the applicant or any other interested party requests a hearing not later than [10] days after receiving the notice, the office shall hold the hearing not later than [20] days after receiving the request].

Comment

1. *See also* the standards for delivery of a certificate of title in Section 15. The determination of the secured party of record, defined at Section 2(a)(25) as the first secured party indicated in the files of the office, *e.g.*, for purposes of subsection (b), is an administrative matter for purposes of this act and is not determinative of priority issues for purposes of this act or [Uniform Commercial Code Article 9]. The effect of a security-interest statement is governed by Sections 25 and 26. Rejection of an application, or cancellation of a certificate of title, affects only the applicant's ownership and does not alter the receipt or effect of a security-interest statement under Sections 25 and 26 or [Uniform Commercial Code Article 9].

2. This section requires the office to create a certificate of title pursuant this act, upon submission of an application meeting the requirements of Section 9, 21, 22, 23, or 24. Other provisions, for example Sections 16-20 and [Uniform Commercial Code Article 9], provide substantive standards to govern the resolution of competing claims, *e.g.*, in contract and priority disputes, but these standards are not intended to be addressed or resolved by the office in the application process. The office should not be liable for a violation of these substantive standards in creating or refusing to create a certificate of title, as long as it acted in good faith; however, these standards will be applicable in the event that there is a judicial review of a decision of the office to create or refuse to create a certificate of title.

3. References to electronic certificates of title in this act are permissive and intended to be applicable only if the state and office authorize electronic certificates of title. *See, e.g.*, subsection (b). These provisions may be included in a state enactment even if electronic certificates are not authorized or contemplated, for possible future use if such authorization later occurs.

4. Once the office has created a certificate of title, under Section 10(d) the office can cancel it only for a reason that would allow an application to be rejected under Section 10(c), or if the office is required to cancel the certificate of title under another section of this act, *e.g.*, Section 15(c) or (d), 21(b)(3), or 22(b)(4).

5. The optional language in Section 10(d) can be included as a supplement to the state's administrative procedures act or in lieu of such an act if none currently applies. It provides a reasonable procedure to comply with due process standards while balancing the rights of interested parties, the importance of the vehicle use to the affected parties, and the need for a remedy that is cost-effective considering the value of the vehicle.

SECTION 11. CONTENTS OF CERTIFICATE OF TITLE.

(a) A certificate of title must contain:

(1) the date the certificate of title was created;

(2) except as otherwise provided in Section 26(b), the name and address of any secured party of record and an indication of whether there are additional security interests indicated in the files of the office or on a record created by a governmental agency of any jurisdiction and submitted to the office;

(3) all title brands covering the vehicle, including brands previously indicated on a certificate of origin or certificate of title created by a governmental agency of any jurisdiction, which are known to the office; and

(4) any other information required by Section 9(b), except the applicant's address.

(b) Nothing in this act precludes an office from noting on a certificate the name and address of a secured party that is not a secured party of record.

(c) An indication of a title brand on a certificate of title may consist of an abbreviation, but not a symbol, and must identify the jurisdiction that created the title brand or the jurisdiction that created a certificate of title created by a governmental agency of any jurisdiction that indicated the title brand. If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate of title, the certificate of title may state: "Previously branded in [insert the particular jurisdiction that created the title brand or whose certificate of title previously indicated the title brand]."

(d) If a vehicle was previously registered in a jurisdiction other than a state, the office shall indicate on the certificate of title that the vehicle was registered in that jurisdiction.

(e) A certificate of title must contain a form that the owner may sign in order to execute the certificate.

Comment

1. “Title brand” is defined in Section 2(a)(31). *See also* Section 9(b)(5), requiring any known title brand to be included in the application for a certificate of title. Any title brand indicated on the certificate of title should be described using plain language or common abbreviations, not codes or symbols, so as to be readily understandable in any state.

2. In common usage, a “title brand” is a notation on the face of a certificate of title that provides notice to subsequent purchasers and creditors of the damage, condition, or prior use of the vehicle. The U.S. titling jurisdictions use a wide variety of terms or symbols to brand titles. This act does not define the specific types of damage or condition that typically give rise to title branding requirements under state law. Previous efforts to establish standard definitions for terms such as “salvage vehicle,” “flood vehicle,” or “rebuilt salvage vehicle” have been contentious.

3. Under this act, other law of this or another state will determine if a title brand is required. If a title brand is required, this act requires the use of words or abbreviations rather than symbols to denote the title brand. If a title brand is required, by the law of this State, this act requires that the title brand be indicated on the face of the certificate of title and all subsequent certificates of title created for the vehicle by the office. Additionally, once a title brand is required by the law of another state, the title brand of that state must be “carried forward” on a certificate of title subsequently issued by the office with respect to the vehicle.

SECTION 12. EFFECT OF POSSESSION OF CERTIFICATE OF TITLE OR CERTIFICATE OF ORIGIN; JUDICIAL PROCESS. A certificate of title created by a governmental agency of any jurisdiction or a certificate of origin does not by itself provide a means to obtain possession of a vehicle. Garnishment, attachment, levy, replevin, or other judicial process against the certificate of title or a certificate of origin is not effective to determine possessory rights with respect to the vehicle. However, this act does not prohibit enforcement of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vehicle under law of this state other than this act. The absence of an indication of a statutory or common-law lien on a certificate of title does not invalidate the lien.

Comment

1. This section is derived from Section 9 of the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955. It makes clear that enforcement of a lien by judicial process must be effected against the vehicle, not the certificate of title. However, this section does not relieve a person of any duty under this act or law other than this act or preclude any remedies in personam. For example, this section does not bar mandatory injunctive or other in personam relief against a person wrongfully withholding a certificate of title, *e.g.*, a turn-over order following a successful replevin action. In addition, if a certificate of title is being wrongfully withheld by a third party, there may be a remedy under Sections 16-24. For example, a lien creditor or other secured creditor could seek possession of the vehicle using legal process, and then obtain a certificate of title under Section 21 or 22; a buyer whose seller wrongfully fails to execute the certificate of title can obtain a new certificate of title under Section 23.

2. This section relates to possession of the vehicle and the effect of legal process. It applies to all vehicles within this state, and subject to this process, even if the vehicle is covered by a certificate of title created by a governmental agency of another jurisdiction. Thus, the scope of this section is not limited by Section 4 of this act.

SECTION 13. OTHER INFORMATION.

(a) The office may accept a submission of information relating to a vehicle for indication in the files of the office, even if the requirements for a certificate of title, an application for a certificate of title, a security-interest statement, or a termination statement have not been met.

(b) A submission of information under this section, to the extent practicable, must include the information required by Section 9(b) for an application for a certificate of title.

(c) The office may require the submission of information relating to a vehicle required for payment of taxes and fees for issuance or renewal of registration.

(d) The office may require a person submitting information under this section to provide a bond in a form and amount determined by the office. A bond must provide for indemnification of any secured party or other interested party against any expense, loss, or damage resulting from indication of the information in the files of the office.

(e) A submission of information under this section and its indication in the files of the office is not a certificate of title, an application for a certificate of title, a security-interest statement, or a termination statement and does not provide a basis for transferring or determining

ownership of a vehicle or the effectiveness of a security-interest statement.

Comment

1. The purpose of this section is to authorize registration of information by the office for purposes not necessarily related to certificate of title transactions. Some states require registration of information as a trigger for other laws or requirements, *e.g.*, relating to taxes or exhaust emissions. This section accommodates that function. One example would be the need of a lessee to register in order to purchase or renew license tags for a vehicle owned by the lessor. This section would permit the lessor to provide registration information to the lessee or the office, who could then register the information in the files of the office in order to allow the purchase of license tags. Another example would be a buyer of vehicle who cannot satisfy the requirements for application of a certificate of title but can provide sufficient registration information to the office to permit the payment of required fees and acquisition of license tags for the vehicle. Of course, the office should be cautious to limit the use of registrations and not allow this procedure to be used as a substitute for a certificate of title.

2. Choice of law concerns with respect to the impact of registration, which could trigger a new choice of law under old [Uniform Commercial Code Article 9] Section 9-103(2)(b), were resolved in revised Article 9 Section 9-303 and do not exist in this act, *e.g.* under Section 4. Therefore there are no choice of law implications relating to certificates of title as a result of registration or a submission of information under this section.

3. This section does not relate to or affect a certificate of title. It applies to any vehicle within this State or owned by a resident of this state, even if the vehicle is covered by a certificate of title created by a governmental agency of another jurisdiction. Thus, the scope of this section is not limited by Section 4 of this act.

4. If the vehicle is subject to a lease, the office may require the submission of the lessee's name and address and the termination date of the lease, and may designate the lessee or the lessor, or both, as a person to receive information relating to the vehicle or certificate of title.

5. This section is derived partially from the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955 (UMVCT Act) Section 11. The requirement for a bond at subsection (d) is derived from UMVCT Act Section 11(b). Subsections (c) and (d) are intended to provide standards for the conditions on registration that can be imposed pursuant to this section: Making clear that conditions can be imposed only to effectuate state law, but for that purpose as the office reasonably deems appropriate; any requirement for a bond is at the discretion of the office.

SECTION 14. MAINTENANCE OF AND ACCESS TO FILES.

(a) For each record relating to a certificate of title submitted to the office, the office shall:

(1) ascertain or assign the vehicle identification number, make, and model year of the vehicle to which the record relates pursuant to Section 6;

(2) indicate in the files of the office the vehicle identification number, make, and model year of the vehicle to which the record relates and the information in the record, including the date [and time] the record was delivered to the office;

(3) maintain the file for public inspection subject to subsection (d); and

(4) index the files of the office so as to be accessible as required by subsection (b).

(b) The office shall indicate in the files of the office the information contained in all certificates of title created under this act. The files of the office must be accessible by the vehicle identification number for the vehicle covered by the certificate and any other indexing method used by the office.

(c) To the extent known to the office, the files of the office maintained under this section relating to a vehicle must indicate all title brands and the name or names of any secured party and claimant to ownership of the vehicle and include stolen-property reports and security-interest statements.

[(d) Except as otherwise provided by law of this state other than this act, the information required under Section 11 is a public record. Whether other information in the files of the office is made available to the public is governed by law of this state other than this act.]

Legislative Note: *A state with separate public records laws governing disclosure of personal information should cross-reference those laws at subsection (d). A state without such a law to govern these files should enact the optional language at subsection (d) to distinguish between private and public information.*

Comment

1. This section is derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955. Section 8 and [Uniform Commercial Code Article 9] Section 9-519. This is a counterpart to Section 9-519(a). This section may be limited by other state and federal laws. *See, e.g.,* the Drivers Privacy Protection Act, 18 U.S.C. Sections 2721-2725 (2005).

2. The office is required to accept each application for a certificate of title that is submitted in accordance with Section 9 and, if the files of the office indicate that all security-interest statements have been terminated, to create a written or electronic certificate of title, at the

option of the owner in accordance with this act. *See* Sections 9-11, 15, 21-23, and 27.

3. This section requires the office to maintain files of the information required for the purposes of this act. Inherent in this obligation is the authority to maintain the files directly, or to provide for such maintenance by a qualified third party. Section 11 requires that any certificate of title created by the office must reflect the files of the office as to the information required pursuant to this act.

SECTION 15. DELIVERY OF CERTIFICATE OF TITLE.

(a) Upon creation of a certificate of title, the office shall promptly deliver a written certificate of title, or a record evidencing an electronic certificate of title, to any secured party of record at the address shown on the security-interest statement submitted by the secured party of record. Unless previously provided to the owner of record, the office shall promptly deliver a record evidencing the certificate of title to the owner of record at the address indicated in the files of the office. If no secured party is indicated in the files of the office, the written certificate of title or record evidencing the electronic certificate of title must be delivered to the owner of record. A record evidencing an electronic certificate of title may be delivered to a mailing address or, if indicated in the files of the office, an electronic communication address.

(b) Within a reasonable time not to exceed [15] business days after receipt of a request that a written certificate of title be created and delivered pursuant to subsection (a), the office shall create the certificate and deliver it to the person making the request.

(c) If a written certificate of title is created, any electronic certificate of title is canceled and replaced by the written certificate of title. The cancellation must be indicated in the files of the office with an indication of the date [and time] of cancellation.

(d) Before an electronic certificate of title is created, any certificate of title must be surrendered. If an electronic certificate of title is created, any existing written certificate of title that has been surrendered to the office must be destroyed or otherwise canceled, with an indication in the files of the office of the date [and time] of destruction or other cancellation. If the written certificate of title being canceled is not destroyed, the cancellation must be indicated on the face of the written certificate of title.

Comment

1. Derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955 (UMVCT Act) Section 10. *See also* UMVCT Act Section 8. As discussed below, this provides a “title holding” system allowing the secured party of record to hold any written certificate of title. While this is consistent with existing law in most states, it represents a change in a minority of states. If there is no written certificate of title, an electronic certificate of title can be maintained in the files of the office, pursuant to subsection (d), with a record evidencing the certificate sent to the owner of record and the secured party of record, if any, under subsection (a). Section 9 (Application for a Certificate of Title) provides for optional use of an e-mail address, to be used for delivery of electronic records. An electronic certificate of title must be maintained exclusively in files maintained or designated by the office. *See* Section 2(a)(5), 10.

2. An electronic certificate of title consists solely as a file of the office, and is not delivered to the owner or secured party; however, a record evidencing the electronic certificate of title is to be sent under Section 15(a) to any secured party of record and the owner of record. This evidence may be used by secured parties and the owner in negotiating and documenting subsequent transactions, but the electronic certificate of title is not affected until there is an application under Section 9. *See also* Section 16.

3. The determination by the office of the secured party of record, as required under this section, is an administrative determination for purposes of this section and is not dispositive of priority issues governed by [Uniform Commercial Code Article 9]. The secured party of record, if any, may elect to have the office create a written certificate of title. The owner of record also may make such an election but only if no secured party is indicated in the files of the office.

4. This section does not require the creation of a written certificate of title, except at the request of the secured party of record or, in some circumstances, the owner; if a written certificate of title is created it must be delivered to the secured party of record, if any. This is designed to make the state a certificate of title “title holding” state when the option to have a written certificate of title is exercised. However, while “title holding” of written certificates of title may be useful for anti-fraud purposes, it also may create delays for subsequent purchasers who need the certificate of title to perfect a new security interest or otherwise execute a subsequent transaction. Under the U.S. Supreme Court’s interpretation of the Bankruptcy Code in *Fidelity Financial Services v. Fink*, 522 U.S. 211 (1998), such delays may be legally fatal. This section allows the owner to request creation of a written certificate of title to facilitate subsequent transactions, but only if termination statements have been received by the office for all security-interest statements and no other security interest is indicated in the files of the office. If the vehicle is subject to a perfected security interest, this section does not allow the owner to require the office to create a written certificate of title. However, this does not interfere with the owner’s ability to refinance a prior secured credit transaction, as Sections 25 and 26 allow perfection of a new security interest by filing a security-interest statement, without submission of

the certificate of title to the office. Thus a secured party can refinance a prior loan or credit sale, and perfect a new security interest in a timely manner for purposes of the Bankruptcy Code, 11 U.S.C. Section 547(c)(1) or (3), without the certificate of title, then pay off the prior creditor and await the prior creditor's release of any written certificate of title, without risk of attack under the Bankruptcy Code preference rules. This illustrates the importance of allowing subsequent parties to search for and file security-interest statements without otherwise having access to the certificate of title. *See* Sections 25-28.

5. So long as this act applies, a security interest may be perfected under Sections 25 and 26, regardless of who holds the certificate of title or even if the vehicle is not covered by a certificate of title. This act applies if the vehicle is covered by a certificate of title in this State under Section 4(b) or, if the vehicle is not covered by a certificate of title created by a governmental agency of any state, if this act applies pursuant to the choice of law rules of this State. This act ceases to apply when a valid application for a certificate of title created by a governmental agency of any state is subsequently made in another state under Section 4 and [Uniform Commercial Code Article 9] Section 9-303.

6. Upon a proper request, the office must create and deliver a written certificate of title within a reasonable period, not to exceed a maximum specified limit to be determined by each state. Fifteen days is recommended as a customary period.

SECTION 16. TRANSFER.

(a) Upon sale of a vehicle covered by a certificate of title, a person authorized to execute the certificate of title, as promptly as practicable and in compliance with this act and law of this state other than this act, shall execute the certificate to the buyer or deliver to the office a signed certificate of title or a record evidencing execution of an electronic certificate of title to the buyer. The buyer of a vehicle covered by a certificate of title has a specifically enforceable right to require the seller to execute the certificate of title to the buyer or deliver to the office a signed certificate of title or other record evidencing the transfer.

(b) Execution of a certificate of title created by a governmental agency of any jurisdiction satisfies subsection (a).

(c) As between the parties to a transfer and their assignees and successors, a transfer of ownership is not rendered ineffective by a failure to execute a certificate of title or certificate of origin as provided in this section. However, except as otherwise provided in Section 18 (b) and (c), 19, 21, or 22, a transfer of ownership without execution of a certificate of title or certificate of origin is not effective as to other persons claiming an interest in the vehicle.

(d) Before an agreement to transfer ownership by an electronic certificate of title is made or any consideration for the transfer is paid, and before a record evidencing the transfer is executed to the transferee or delivered by the transferor to the office, the transferor shall deliver to the transferee a signed record containing the information required by Section 9(b), and the transferee shall deliver to the transferor a signed record acknowledging receipt of the information. The transferee has a specifically enforceable right to receive this information before any consideration is paid. The record delivered to the office must indicate that these requirements have been met.

(e) After execution of the certificate of title and delivery of possession of the vehicle to the transferee, the transferor is not liable as owner for any damages resulting from operation of the vehicle thereafter even if the transferee fails to apply for a new certificate of title reflecting the transfer.

Comment

1. Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers of ownership to a vehicle covered by a certificate of title. *See also* the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955 Section 14. Section 16(c) of this act makes clear that the transferor's ownership is transferred upon execution of the certificate of title or a certificate of origin, even though an application for a new certificate of title has not been made. A certificate of title executed to the transferee is evidence of this ownership. *See* Section 2(a)(5). Subsection (c) clarifies that ownership of a vehicle covered by a certificate of title also may be transferred without the certificate of title, though such transfers are not effective as to third parties claiming an interest in the vehicle except as provided in Section 18 or 19, *e.g.*, with respect to the rights of a good faith purchaser for value or a buyer in ordinary course of business. *See also* Sections 20-23. For example, rights under Section 16(c) are subject to claims asserted under Section 18(b) or 19(b).

2. This act is supplemented by otherwise applicable law, for example the law of agency. *See* Section 3. Therefore the obligations and rights recognized in this section can be exercised by authorized representatives of the transferor and transferee. *See also* Section 26(b).

3. Section 16(a) provides the buyer a right to execution of the certificate of title upon sale of the vehicle. Subsection (b) provides that execution of the certificate of title constitutes a transfer of ownership. After execution of the certificate of title the transferor is no longer the vehicle owner, *e.g.*, for purposes of financial responsibility laws. *See also* Section 17. Subsection (c) recognizes that ownership can also be transferred by other means, *e.g.*, by a contract or bill of sale; such transfers are not invalidated by this act or the failure to execute a

certificate of title, though such transfers may be ineffective against other persons claiming an interest in the vehicle (e.g., a secured creditor of the transferor) or a purchaser or buyer under Section 18 or 19.

4. Section 16 and Sections 18-20 govern the rights of the parties to transfers of ownership. Except as noted above, the rights and priorities of other parties, including secured parties and lien creditors, are governed elsewhere in this act and by other law. For example, the priorities of security interests are governed by [Uniform Commercial Code Article 9], though perfection as to most vehicles is governed by Sections 25 and 26. *See also* [Uniform Commercial Code Article 9] Sections 9-109, 9-303, and 9-311.

5. *See also* the rights of purchasers and buyers under Sections 18 and 19. Section 19 specifies that a transferee that does not obtain execution of the certificate of title takes subject to interests indicated on the certificate, of title, except in certain cases where the transferee is a buyer in ordinary course of business. Thus Section 16(c) is subject to Section 19.

SECTION 17. NOTICE OF TRANSFER WITHOUT APPLICATION. A transferee or transferor, in accordance with standards and procedures established by the office, may deliver a signed record to the office giving notice of the transfer, to indicate its ownership or lack of ownership, without filing an application for a certificate of title. The record may indicate the transfer of ownership between the transferor and transferee. The record is not a certificate of title and is not effective as to other persons claiming an interest in the vehicle. The delivery to the office of the record containing the notice does not relieve any party of any obligation under Section 9 or 16.

Comment

1. This section provides a basic legal framework for providing notice of ownership transfers to the office, without application for or execution of a certificate of title and evidence. This allows a transferor to document its non-ownership of a vehicle. This is intended to supplement Sections 9, 10, 13, 16, and (as relevant) Sections 21-23. For example, one purpose is to allow a transferor or transferee to provide notice of the transfer to the office without meeting the requirements for an application under Section 9. Under Section 16, a transfer of ownership may occur without notice to the office. This section allows either the transferor or the transferee to provide that notice even if the requirements for an application under Section 9 have not been met.

2. This notice procedure is not a substitute for an application for a certificate of title pursuant to Section 9. A record submitted or files of the office created pursuant to this section are not a certificate of title or an application for or execution of a certificate of title. In order for

a certificate of title to be created pursuant to Section 10, reflecting the transfer, the transferee of the vehicle must submit to the office the signed certificate of title or other signed record evidencing the transfer, and the information required by Sections 9 and 16, or any other documentation required by the office in accordance with Sections 21-23, as applicable, including submission of any required fee and tax. This section merely provides a mechanism for providing notice to the office for informational purposes, for whatever purposes the office, or the transferor or transferee, may desire; this section does not define any resulting legal consequences. The legal effects of notice are left to law other than this section. *See, e.g.*, Section 16(b) (execution of certificate of title passes ownership, without notice to the office); Section 16(c) (ownership may pass without a certificate of title). The office that receives this information should provide a procedure to identify, expunge, or segregate contested or questionable information in appropriate circumstances.

SECTION 18. POWER TO TRANSFER.

(a) A purchaser of a vehicle has the protections afforded by [Uniform Commercial Code Sections 2-403(1), 2A-304(1), and 2A-305(1)].

(b) A buyer in ordinary course of business or lessee in ordinary course of business of a vehicle has the protections afforded by [Uniform Commercial Code Sections 2-403(2), 2A-304(2), and 2A-305(2)], even if the certificate of title is not executed to the buyer or lessee.

(c) A purchase of a leasehold interest is subject to [Uniform Commercial Code Section 2A-303].

(d) Except as otherwise provided in Section 16, the rights of other purchasers of vehicles and of lien creditors are governed by [Uniform Commercial Code Articles 2, 2A, [6,] 7, and 9].

Comment

1. Subsection (a) incorporates by reference the provisions of [Uniform Commercial Code Article 2] Section 2-403(1), to protect good faith purchasers for value, so as to conform certificate of title law to the equivalent rules in [Uniform Commercial Code Article 2]. *See also* [Uniform Commercial Code Article 2A] Sections 2A-304 and 2A-305, also incorporated by reference. “Value” is defined at [Uniform Commercial Code Article 1] Section 1-204. Failure of a purchaser to obtain execution of a certificate of title may bar good faith purchaser status. “Good faith” is defined at Section 2(a)(12), consistent with [Uniform Commercial Code Article 1] Section 1-201(b)(20), to include observance of reasonable commercial standards of fair dealing. While it is customary for a buyer in ordinary course of business of a vehicle to buy the vehicle without obtaining execution of the certificate of title (so as to be protected under Section

18(b), this is not customary for a purchase from a non-dealer (as governed by Section 18(a)). Thus a buyer who buys a vehicle outside the ordinary course of business and without execution of the certificate of title may not be observing reasonable commercial standards of fair dealing, and may not qualify as a good faith purchaser under Section 18(a) and [Uniform Commercial Code Article 2] Section 2-403(1). However, such a buyer will be a purchaser under Section 2-403(1) and a transferee under Section 16(c).

2. Subsection (b) is patterned on [Uniform Commercial Code Article 2] Section 2-403(2) and (3), for consistency and to make clear that the Article 2 “entrustment” rule applies to vehicles, even if the certificate of title is not executed to the buyer or lessee. “Buyer in ordinary course of business” and “lessee in ordinary course of business” are defined in Section 2.

3. [Uniform Commercial Code] Section 2-403(2), incorporated by reference in subsection (b), uses the term “goods of that kind”. For a further discussion of that phrase, see Comment 7 to Section 27.

4. Sections 18-23 comprise a package that accommodates electronic and informal transfers while recognizing the primacy of a written certificate of title and protecting good faith purchasers and buyers in ordinary course of business.

SECTION 19. OTHER TRANSFEREES OF VEHICLE COVERED BY CERTIFICATE OF TITLE.

(a) Except as otherwise provided in this section or Section 18(b), a transferee of ownership takes subject to:

(1) a security interest in the vehicle indicated on a certificate of title; and
(2) if the certificate of title contains a statement that the vehicle is or may be subject to security interests not indicated on the certificate of title, a security interest not so indicated.

(b) If, while a security interest in a vehicle is perfected by any method under the law of any jurisdiction, the office creates a certificate of title that does not indicate the vehicle is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate, a buyer of the vehicle, other than a person in the business of selling or leasing goods of that kind, takes free of the security interest if the buyer:

(1) gives value in good faith, receives possession of the vehicle, and obtains execution of the certificate of title; and

(2) does not have knowledge of the security interest in the vehicle.

(c) A buyer in ordinary course of business takes free of a security interest in the vehicle, including a security interest indicated on a certificate of title, created by the buyer's seller, even if the security interest is perfected, the buyer knows of its existence, and the certificate of title was not executed to the buyer. A lessee in ordinary course of business takes its leasehold interest free of a security interest in the vehicle, including a security interest indicated on a certificate of title, created by the lessee's lessor, even if the security interest is perfected, the lessee knows of its existence, and the certificate of title was not executed to the lessee. This subsection does not affect a security interest in a vehicle in the possession of the secured party under [Uniform Commercial Code Article 9].

(d) If, while a security interest in a vehicle is perfected by any method under the law of any jurisdiction, the office creates a certificate of title that does not indicate that the vehicle is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate of title, the security interest is subordinate to a conflicting security interest in the vehicle which is perfected after creation of the certificate of title and without the conflicting secured party's knowledge of the security interest.

(e) A security interest is indicated on an electronic certificate of title if it is indicated in the record of the certificate of title maintained by the office.

Comment

1. Subsection (a) and Section 18(a) state the basic common law rule of assignment, which also runs throughout the [Uniform Commercial Code]: The purchaser or other transferee takes the rights of the transferor, *e.g.*, subject to security interests indicated on the certificate of title or in the office files, as applicable. This is subject to the exceptions stated in Sections 18 and 19. Subsection 19 (a) also reflects the [Uniform Commercial Code Article 9] principle that rights under the certificate of title are paramount. *See, e.g.*, [Uniform Commercial Code Article 9] Sections 9-303, 9-311, 9-313, 9-335, 9-337, and 9-338. This represents the base line rule, with subsection (b) stating a corollary: A buyer who takes by execution of a certificate of title and meets the other requirements of subsection (b) takes free of security interests not indicated on the certificate of title. Subsection (c) then provides an exception to subsection (a), allowing a buyer in ordinary course to take free of security interests indicated on the certificate of title or otherwise perfected, even if the buyer has knowledge of the security interest and the certificate of title is not executed. This is a corollary to Section 18(b), which protects the buyer in ordinary course of business against competing ownership claims. The relation between Sections 18(b) and 19(c) is

similar to the relation between [Uniform Commercial Code] Sections 2-403(2) and 9-320(a). *See also* Sections 16-18, 20-23, and 25-27; [Uniform Commercial Code 2A] Section 2A-304 and Official Comment.

2. Subsection (b) is patterned on [Uniform Commercial Code Article 9] Section 9-337, but with important differences: Subsection (b) applies to intrastate sales, while Section 9-337 applies only to interstate scenarios; unlike Section 9-337, subsection (b) allows a buyer to take free of a security interest properly perfected in the same state (though only if it is not indicated on the certificate of title executed to the buyer). However, subsection (b) also imposes requirements on the buyer not found in Section 9-337: Execution of the certificate of title and good faith (along with the requirements of value, delivery, and a lack of knowledge also found in Section 9-337). These requirements assure that only an innocent purchaser will qualify for the exceptional protection provided by this section.

3. Subsection (b) allows a buyer (other than a dealer) to rely on a certificate of title in the purchase of vehicle for value and without knowledge of an adverse claim not indicated on the certificate of title. Other evidence of reliance is not required: Subsection 19(b) requires only that the “buyer” (as defined in Section 2(a)(1)) take delivery of the vehicle in good faith, for “value,” and without knowledge of the adverse claim, by execution of a certificate of title. This resolves, in favor of such a buyer, conflicts between this buyer and a secured party of the seller whose interest would be enforceable against the seller. As noted, Subsection (b) is similar to Article 9 Section 9-337, except that Subsection (b) applies to intrastate transfers and imposes additional burdens on the buyer. In addition, Section 19(b) does not contain a counterpart to [Uniform Commercial Code Article 9] 9-337(2), protecting a secured party from prior perfected security interests not noted on the certificate of title. If such a security interest is created by a buyer who is protected under Section 19(b), the secured party would be protected by the rights of its debtor (the buyer) under Section 19(b). However, if the security interest is created by a debtor who also created the prior security interest, perfected under Section 26 but not indicated on the certificate of title, there is no protection for the second secured party unless [Uniform Commercial Code Article 9] Section 9-337(2) applies.

4. Subsection (c) recognizes an exception to the general rule at subsection (a), for a buyer in ordinary course of business (BIOCOB), based on [Uniform Commercial Code Article 9] Section 9-320. Section 9-320(a) cuts off security interests created by the seller. Subsection (c) recognizes and adopts this provision in the context of a certificate of title transaction, and specifies that a buyer of a vehicle can be a BIOCOB even if that person does not obtain execution of the certificate of title. *See also* [Uniform Commercial Code Article 2A] Sections 2A-304, 2A-305. But this buyer does not prevail if the vehicle is in the possession of the secured party. *See also* [Uniform Commercial Code Article 9] Section 9-320(e).

5. The result of subsection (c) is to allow the BIOCOB of a vehicle covered by a certificate of title to take free of claims and security interests created by the seller (*e.g.*, an inventory security interest created by an auto dealer who sells the vehicle to the BIOCOB), even

if the secured party holds the certificate of title; but, like [Uniform Commercial Code Article 9] Section 9-320(a), Section 19(c) does not allow the BIOCOP to take free of a security interest created by a consignor to the dealer that sold the vehicle, if the security interest is perfected under this act, because that is not a security interest created by the seller, unless the consignor and dealer/consignee are the same or are so closely connected as to be treated as the same entity. This reflects the long-standing [Uniform Commercial Code Article 9] policy that even a BIOCOP only takes free of security interests created by his or her seller, not security interests created by other or prior parties. *But see* Section 18(b) (the entrustment rule) for buyer remedies in a consignment scenario.

6. Section 19 is consistent with the [Uniform Commercial Code] and most case law. It rejects cases to the contrary, such as *First Merit Bank v. Angelini*, 823 N.E.2d 485 (Ohio Ct. App. 2004), *appeal not acc'd*, 824 N.E.2d 541 (Ohio 2005) (table). It also resolves a related issue: Can a buyer of vehicle from a dealer be a BIOCOP without execution of the certificate of title? The [Uniform Commercial Code] definition of BIOCOP is not specific on this, but is broad enough to accommodate this as a common practice. The cases are split. However, this is a widely accepted practice in sales by dealers, thus Sections 18(b) and 19(c) expressly protect a buyer from a dealer with or without execution of a certificate of title. Rights as between the dealer and its secured party or consignor, such as the priorities of claims to the sales proceeds, are left to other law. *See, e.g.*, [Uniform Commercial Code] Article 9 Sections 9-102(a)(64), 9-315, 9-322. “Execution” is defined at Section 2(a)(11).

SECTION 20. EFFECT OF OMISSION OR INCORRECT INFORMATION.

(a) Except as otherwise provided in this section, a certificate of title, certificate of origin, security-interest statement, or other record required or authorized by this act is effective even if it contains incorrect information or does not contain required information.

(b) In addition to any rights provided under Section 18 or 19, if a certificate of title, certificate of origin, security-interest statement, or other record required or authorized by this act is seriously misleading because it contains incorrect information or omits required information, a purchaser of the vehicle to which the record relates takes free of any interest that would have been indicated in the record if the correct or omitted information had been indicated, to the extent that the purchaser gives value in reasonable reliance on the incorrect information or the absence of the omitted information.

(c) Except as otherwise provided in subsection (d) or Section 25(c), a description of a vehicle, including the vehicle identification number, in a certificate of title, certificate of origin, security-interest statement, or other record required or authorized by this act which

otherwise satisfies this act is not seriously misleading, even if not specific and accurate, if the description reasonably identifies the vehicle.

(d) With respect to a security interest or other interest indicated in the files of the office and not indicated on a written certificate of title, a failure to indicate the information specifically or accurately is not seriously misleading if a search of the files of the office using the correct vehicle identification number or other required information, using the office's standard search logic, if any, would disclose the security interest or other interest.

Comment

1. Often a certificate of title, certificate of origin, security-interest statement, or other record that fails to state accurately the name and address of the owner, the name and address of the secured party, or the description of the vehicle, is not seriously misleading solely for that reason, because the written certificate of title (or information indicated in the electronic certificate of title) is provided to the purchaser or secured party by the owner or the office, the relevant correct or sufficient information is easily ascertainable, and the error causes no injury. Minor errors of this type, *e.g.*, an error in the spelling of the owner's name, are common and ordinarily harmless, and should not invalidate a certificate of title or transaction. Section 20 makes clear that a certificate of title or other record containing erroneous information, or omitting information, is not rendered invalid by the erroneous information or omission. A certificate of title is valid and effective despite an error or omission, except to the extent that the error or omission is seriously misleading so that a purchaser is misled by the erroneous information or omission.

2. This section is modeled on [Uniform Commercial Code Article 9] Sections 9-108, 9-337, 9-338, 9-502, and 9-506. As noted, the purpose is to prevent harmless errors from invalidating a transaction, *e.i.*, by recognizing that errors in the parties' names or an error in the description of the vehicle often will not mislead the parties to a certificate of title transaction. This issue is different than under [Uniform Commercial Code Article 9], where an error in the debtor's name can mislead filing searches. Thus, no equivalent to [Uniform Commercial Code Article 9] Section 9-506(c) is needed if the security interest is noted on a written certificate of title. For other cases, subsection (d) provides a rule equivalent to Section 9-506(c).

SECTION 21. TRANSFER BY SECURED PARTY'S TRANSFER STATEMENT.

(a) In this section, "secured party's transfer statement" means a record signed by the secured party of record stating:

(1) that the owner of record has defaulted on an obligation to the secured party of record;

(2) that the secured party of record is exercising or has exercised post-default remedies with respect to the vehicle;

(3) that, by reason of the exercise, the secured party of record has the right to transfer the rights of the owner of record;

(4) the name and last known mailing address of:

(A) the owner of record;

(B) the secured party of record; and

(C) any other purchaser;

(5) any other information required by Section 9(b); and

(6) that the certificate of title is an electronic certificate of title, or that the secured party does not have possession of the written certificate of title created in the name of the owner of record, or that the secured party is delivering the written certificate of title to the office with the secured party's transfer statement.

(b) Completion and delivery to the office of a secured party's transfer statement, and payment of all applicable taxes and fees, entitles the secured party to the creation of a certificate of title showing the secured party of record or other purchaser as the owner of record. Unless the secured party's transfer statement is rejected by the office for a reason set forth in Section 10(c), the office shall:

(1) accept the secured party's transfer statement;

(2) amend the files of the office to reflect the transfer;

(3) cancel the certificate of title created in the name of the owner of record listed in the secured party's transfer statement, whether or not the certificate of title has been delivered to the office;

(4) create a new certificate of title indicating the secured party of record or other purchaser as the vehicle's owner of record; and

(5) deliver the new certificate of title pursuant to Section 15.

(c) The creation of a certificate of title under subsection (b) is not of itself a disposition of the vehicle and does not of itself relieve the secured party of its duties under [Uniform Commercial Code Article 9].

Comment

1. This section is based on [Uniform Commercial Code Article 9] Section 9-619 and largely follows the language of that section, for purposes of consistency [Uniform Commercial Code Article 9]. Like [Uniform Commercial Code Article 9], this section makes clear that creation of a certificate of title and transfer of ownership under this section do not constitute or serve as a substitute for a disposition of collateral under [Uniform Commercial Code Article 9]. Thus the requirements for a disposition of collateral under [Uniform Commercial Code Article 9] Part 6 are not affected by this section. one purpose of this section is to facilitate a disposition of collateral by permitting creation of a certificate of title to be executed to the buyer at the disposition sale. This section adapts the provisions of [Uniform Commercial Code Article 9] Section 9-619 to the specifics of certificate of title transactions, to help unify the rules of [Uniform Commercial Code Article 9] and this act.

2. This section is not mandatory for secured parties. It does not require the secured party to obtain a certificate of title upon repossession or disposition. The obligation to deliver a certificate of title to a purchaser is provided by Section 16, supplemented by the remedial provisions of Section 23. The post-default rights and remedies of debtors and secured parties are governed by [Uniform Commercial Code Article 9], and may also be affected by consumer protection laws and other laws such as state retail installment sales acts.

SECTION 22. TRANSFER BY OPERATION OF LAW.

(a) In this section:

(1) “By operation of law” means pursuant to a law or judicial order affecting ownership of a vehicle:

(A) on account of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;

(B) through the exercise of the rights of a lien creditor or a person having a statutory or common law lien or other nonconsensual lien; or

(C) through other legal process.

(2) “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 the ownership interest of the owner of record and containing:

(A) the name and mailing address of the owner of record and the transferee and the other information required by Section 9(b);

(B) documentation sufficient to establish the transferee’s interest

or right to acquire the ownership interest of the owner of record; and

(C) a statement that:

(i) the certificate of title is an electronic certificate of title;

(ii) the transferee does not have possession of the written certificate of title created in the name of the owner of record; or

(iii) the transferee is delivering the written certificate of title to the office with the transfer-by-law statement.

(b) If a transfer-by-law statement is delivered to the office with all taxes and fees and documentation satisfactory to the office as to the transferee's ownership interest or right to acquire the ownership interest of the owner of record, unless it is rejected by the office for a reason set forth in Section 10(c), the office shall:

(1) accept delivery of the transfer-by-law statement;

(2) promptly send notice to the owner of record and to all persons indicated in the files of the office as having an interest, including a security interest, in the vehicle that a transfer-by-law statement has been delivered to the office;

(3) amend the files of the office to reflect the transfer;

(4) cancel the certificate of title created in the name of the owner of record indicated in the transfer-by-law statement, whether or not the certificate has been delivered to the office;

(5) create a new certificate of title, indicating the transferee as owner of record; and

(6) deliver the new certificate of title.

(c) This section does not apply to a transfer of an interest in a vehicle by a secured party under [Uniform Commercial Code Article 9] or Section 21.

Comment

1. This section supplements [Uniform Commercial Code Article 9] Section 9-619, though this section has a different purpose and therefore diverges from the Section 9-619 language. The purpose of this section is to provide a procedure to accommodate transfers of ownership due to death, divorce, corporate mergers, bankruptcy, enforcement of liens, and the like. As with Section 9-619, this section makes clear that it is not a substitute for a [Uniform Commercial

Code Article 9] disposition of collateral. The post-default rights and remedies of debtors and secured parties are governed by [Uniform Commercial Code Article 9].

SECTION 23. APPLICATION FOR TRANSFER OF OWNERSHIP OR TERMINATION OF SECURITY-INTEREST STATEMENT WITHOUT CERTIFICATE OF TITLE OR CERTIFICATE OF ORIGIN.

(a) Except as otherwise provided in Section 21 or 22, upon receiving an application that includes an indication of a transfer of ownership or a direction to terminate a security-interest statement but is not accompanied by submission of a signed certificate of title or certificate of origin or, as applicable, a termination statement pursuant to Section 27, the office may create a certificate of title or terminate the security-interest statement under this section only if:

- (1) all other requirements under Sections 9 and 10 are met;
- (2) the applicant has provided an affidavit stating facts that indicate the applicant is entitled to a transfer of ownership or termination of the effectiveness of a security-interest statement;
- (3) at least 45 days before the office creates the certificate of title, the office has sent notice of the application to all persons having an interest in the vehicle as indicated in the files of the office and no objection from any of those persons has been received by the office; and
- (4) the applicant submits any other information required by the office to evidence the applicant's ownership or right to termination of the security-interest statement, and the office has no credible information indicating theft, fraud, or any undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vehicle.

(b) Unless the office determines, by any reasonable method, that the value of the vehicle is less than [\$3,000], before creating a certificate of title, the office may require an applicant under subsection (a) to post a bond or provide an equivalent source of indemnity or security. The bond, indemnity, or other security must be in a form prescribed by the office and provide for indemnification of any owner, purchaser, or other claimant for any expense, loss, delay, or damage, including reasonable attorney's fees and costs but not consequential damages,

resulting from creation of a certificate of title or termination of a security-interest statement, but may not exceed twice the value of the vehicle as determined by the office.

Legislative Note: *The enacting state should consider the appropriate amount to insert in subsection (b) as the benchmark to determine which vehicles are not subject to the requirement for a bond. Such a requirement is not cost effective for low-value vehicles. The determination should weigh the need for a cost-effective remedy against the risk that applications without a bond pose in terms of potential fraud.*

(c) If the office has not received a claim for indemnity within one year after creation of the certificate of title under subsection (a), upon request in a form and manner specified by the office, the office shall release any bond, indemnity, or other security.

(d) The office may indicate in a certificate of title created under subsection (a) that the certificate of title was created without submission of a signed certificate of title or termination statement. If no credible information indicating theft, fraud, or any undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vehicle has been delivered to the office within one year after creation of the certificate of title, upon request in a form and manner specified by the office, the office shall remove the indication from the certificate of title.

Comment

1. Derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955 Section 11. *See also* Sections 17-19, 21-23 of this act. Section 23 may be used, *e.g.*, to request a certificate of title to effectuate a sale, gift, auction or judicial sale, [Uniform Commercial Code Article 9] disposition sale, or other transfer where the seller, donor, or other transferor is unable or unwilling to obtain or execute the certificate of title. Section 23 can also be used in lieu of a termination statement under Section 27, *e.g.*, if a secured debt has been satisfied and the secured party is unable or unwilling to provide a termination statement. Section 23 requires a supporting affidavit, 45 days prior notice to all known interested parties, and (at the option of the office): other documentation (*e.g.*, a bill of sale or sales contract and cancelled check or other evidence of payment); a bond; and/or an indication on the certificate of title, as additional potential safeguards to supplement the procedures at Sections 9 and 10.

2. This section is not for use by an owner of record seeking to replace a lost, stolen, or destroyed certificate of title; that procedure is provided at Section 24. Section 24 is designed to allow a replacement title to be obtained by the same owner; it does not directly involve a transfer of ownership. In contrast, Section 23 provides for a transfer of title or termination of perfection of a security interest where the applicant presents evidence that he or she is entitled to such a transfer or termination, satisfactory to the office, and the transferor or secured party is unable or unwilling to execute the certificate of title as otherwise required. The requirements and remedy

provided by this section are in addition to those set forth elsewhere in this act, *e.g.*, at Sections 21 and 23.

SECTION 24. 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 there is no secured party indicated in the files of the office, the owner of record may apply for and, by furnishing information satisfactory to the office, obtain a replacement certificate of title in the name of the owner of record.

(b) An application for a replacement certificate of title must be submitted in a record signed by the applicant and, except as otherwise permitted by the office, must comply with Section 9.

(c) Unless it has been lost, stolen, or destroyed or is otherwise unavailable, the existing written certificate of title must be submitted to the office with an application for a replacement certificate of title.

(d) A replacement certificate of title created by the office must comply with Section 11 and indicate on the face of the certificate of title that it is a replacement certificate of title.

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

Comment

1. *See* Comment to Section 23. Section 24 is derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955 Section 13. A purchaser to whom a replacement certificate of title is executed can qualify as a good faith purchaser (GFP) or buyer in ordinary course of business (BIOCOB), *e.g.*, under Section 16, 18 or 19, [Uniform Commercial Code Article 2] Section 2-403, and [Uniform Commercial Code Article 9] Sections 9-320, 9-337, and 9-338, if all other requirements are met. The indication of a replacement certificate of title required by subsection (d) does not give notice sufficient to bar GFP or BIOCOB status.

SECTION 25. EFFECTIVENESS OF SECURITY-INTEREST STATEMENT.

(a) A security-interest statement is sufficient if it includes the name of the debtor,

the name of the secured party or a representative of the secured party, a description that reasonably identifies the vehicle and is not seriously misleading under Section 20, and is delivered as follows:

(A) if the security-interest statement is indicated on an application for which the office is required to create a certificate of title, by the owner; or

(B) if the security-interest statement is not indicated on an application for which the office is required to create a certificate of title, by a person authorized to file an initial financing statement covering the vehicle pursuant to [Uniform Commercial Code Section 9-509].

(b) A security-interest statement that is sufficient under subsection (a) is effective upon receipt by the office.

(c) Subject to subsections (e) and (f), a security-interest statement is not received if the office rejects the statement pursuant to subsection (e). The office may reject a security-interest statement only in the manner specified in subsection (e) and only if:

(1) the record is not delivered by a means authorized by the office;

(2) an amount equal to or greater than the required filing fee is not tendered with the statement or, if the office elects to notify the secured party of the filing fee deficiency, within seven days after the notification has been given;

(3) the record does not include the name and mailing address of a debtor and a secured party or a representative of a secured party;

(4) the record does not contain the vehicle identification number; or

(5) the office cannot identify a file of the office, certificate of title, or application for a certificate of title to which the security-interest statement relates.

(d) The office shall maintain files of the office showing the date of receipt of each security-interest statement that is not rejected and shall make this information available on request.

(e) To reject a security-interest statement, the office must send notice of rejection to the person that delivered the statement, indicating the reasons for the rejection and the date the statement would have been received had the office not rejected it.

(f) If the office does not send notice of rejection under subsection (e), the

security-interest statement is received as of the time it was delivered to the office. Confirmation by the office that the security-interest statement has been entered in the files of the office is conclusive proof that receipt has occurred.

(g) If a security-interest statement sufficient under subsection (a) is tendered with the filing fee and the office sends a notice of rejection without indicating a reason set forth in subsection (c), the security-interest statement is effective as of the business day on which the statement was tendered to the office except as against a purchaser of the vehicle which gives value in reasonable reliance upon the absence of the security-interest statement from the files of the office.

(h) Failure of the office to index a security-interest statement correctly or to indicate the security interest on the certificate of title does not affect the receipt of the security-interest statement.

Comment

1. This section serves a purpose similar to [Uniform Commercial Code Article 9] Section 9-516. It addresses many of the same issues as Section 9-516, *e.g.*, by specifying that a security-interest statement is effective on receipt by the appropriate office and payment of the required fee, unless it is properly rejected for specified reasons. The security-interest statement is effective upon receipt and payment of applicable fees under subsection (b), if the statement is sufficient under subsection (a) and is not rejected under subsections (c) and (e). *See* subsection (f). There is no express time limit for rejection by the office, but confirmation pursuant to subsection (f) of a security-interest statement that is sufficient under subsection (a) means that the security-interest statement has been received and is effective. If the security-interest statement is effective under Section 25(b), and the security interest has attached under [Uniform Commercial Code Article 9], the security interest is perfected under Section 26(a). Thus, perfection of the security interest occurs upon receipt of the security-interest statement and payment of the fee, even if the security interest is never indicated in the files of the office or on a certificate of title, if there has been attachment under [Uniform Commercial Code Article 9]. A record that is not sufficient under subsection (a) is not received by the office for purposes of this section. The effect of this section is limited to the receipt and effectiveness of security-interest statements; it does not impose any affirmative duties on the office.

2. Sections 25 and 26 replace only the [Uniform Commercial Code Article 9] provisions governing perfection by filing a financing statement, for vehicles subject to this act. *See* Section 9-311(a)(2), (b), and (d); this act Section 2 Comment 3. Provisions governing the scope of [Uniform Commercial Code Article 9], attachment of the security interest, priority, and enforcement are not affected by this act. For example, issues relating to repossession of vehicles

and disposition by the secured party are governed by [Uniform Commercial Code Article 9] and, as applicable, other law, and are not governed by this act. *See* Section 12 of this act. However, issues relating to ownership, perfection of the security interest, and other matters governed by this act apply to vehicles subject to this act. *See, e.g.*, Sections 12-26. Priorities of competing ownership claims and security interests are governed by this act and, as applicable, the [Uniform Commercial Code]. *See, e.g.*, Sections 18 and 19; Section 2 Comment 3.

3. Section 25(a) references the requirements for authorization of a financing statement under [Uniform Commercial Code Article 9], and Section 26(a) references the [Uniform Commercial Code Article 9] requirements for attachment. These issues and others within the scope of [Uniform Commercial Code Article 9] remain applicable and are not displaced by this act or other applicable state laws such as retail installment sales acts (RISAs) or the Uniform Consumer Credit Code (U3C). RISAs and the U3C govern some aspects of consumer sales and credit transactions but do not provide for the creation, perfection, or enforcement of security interests or determine ownership of a vehicle; these issues are governed by [Uniform Commercial Code Article 9] and this act.

4. Errors and omissions in the security-interest statement or certificate of title are governed by Section 20. The analysis may be different than under [Uniform Commercial Code Article 9]. For example, under Section 20 an error in the secured party's or debtor's name or the description of the vehicle will be a harmless error if it does not affect a search of the files under the vehicle identification number (VIN) or execution of the certificate of title. An error in the VIN also may be harmless under Section 20(d). Therefore, sufficiency under subsection (a) does not require precision with respect to the debtor's or the secured party's name, or the description of the collateral, in order for receipt of the security-interest statement to occur and the statement to be effective under subsection (b). If the requirements for sufficiency under subsection (a) are met, and the statement is not rejected under subsection (e), the security-interest statement is received under subsection (b), and the effect of any errors will be determined under Section 20. An error in the VIN is grounds for rejection under subsection (c), but does not require rejection, *e.g.*, if the office is able to reconcile the error. Even if the office rejects the security-interest statement due to an erroneous VIN under subsection (c), the security-interest statement may be received and effective under subsection (b) if rejection does not occur under subsection (e). *See also* subsection (f). In that case the security interest will be perfected under Section 26, and the effect of the erroneous VIN will be determined under Section 20. Thus Section 25 determines the receipt and effectiveness of a security-interest statement for purposes of perfection under Section 26, while Section 20 determines the effect on reliance parties of any erroneous information in that statement.

5. Rules governing an application for a certificate of title are at Sections 8 and 9. Adverse claims are covered by Sections 16-19. The secured party may qualify as a "purchaser" as that term is defined in Section 2, *e.g.*, for purposes of the Section 18 provisions governing claims of a purchaser.

6. Consistent with [Uniform Commercial Code Article 9] Section 9-311(a) and (d), this act displaces [Uniform Commercial Code Article 9] only with respect to the [Uniform Commercial Code Article 9] provisions requiring the filing of a financing statement to perfect certain security interests, substituting the rules of this act at Sections 25-26 governing the effectiveness of a security-interest statement as a means of perfection. Other [Uniform Commercial Code Article 9] rules, such as those governing attachment (Section 9-203), priority (Article 9 Part 3), and enforcement (Article 9 Part 6) continue to apply. Moreover, under [Uniform Commercial Code Article 9] Section 9-311(b), unless displaced by the specific provisions of this act, to the extent applicable the filing provisions of Article 9 Part 5 may continue to be relevant to supplement the provisions of this act. For example, *see* [Uniform Commercial Code Article 9] Sections 9-311(d), 9-313(b), and 9-508. However, this act displaces much of Article 9 Part 5 (Filing Office; Contents and Effectiveness of Financing Statement).

7. Subsection (e) provides a procedure to require the office to notify a secured party if a security-interest statement is rejected. No time limit for this notice is provided. A procedure to provide confirmation by the office will accommodate the need for secured parties to receive notice of the receipt, while allowing the office sufficient time to process incoming security-interest statements. If notice of rejection is not sent under subsection (e), or if confirmation is sent under subsection (f), a security-interest statement sufficient under subsection (a) is received and effective under subsection (b), even though it does not otherwise meet the requirements of this act and was not recorded or indexed in the files of the office. In this circumstance, if the requirements of subsection (a) and [Uniform Commercial Code Article 9] are met, the security-interest statement will be effective and under Section 26 the security interest will be perfected by the security-interest statement. Of course, if the security-interest statement is significantly defective on its face, *e.g.*, no debtor's name or a completely erroneous description of collateral, it may not be sufficient under subsection (a), or even if sufficient the error may render it seriously misleading under Section 20. *See also* Section 18. Priorities between the secured party and those who may be prejudiced by the failure of the office to file and index the statement, or to indicate it on the certificate of title, are covered by other sections, *e.g.*, Sections 18-20.

8. This section applies to any vehicle covered by a certificate of title under this act pursuant to Section 4. If there is no certificate of title created by a governmental agency of any state, this act and Sections 25-26 may apply pursuant to this State's choice of law rules, *e.g.*, if the vehicle is located in or owned by a resident of this State or is registered with an Indian tribe in this State pursuant to a tribal law that does not meet the requirements for a certificate of title statute under [Uniform Commercial Code Article 9] Section 9-102(a)(10).

SECTION 26. PERFECTION OF SECURITY INTEREST.

(a) Except as otherwise provided in subsection (b), (d), or (e), a security interest in a vehicle may be perfected only by a security-interest statement that is effective under Section 25. The security interest is perfected upon the later of receipt of the security-interest statement

under Section 25 or attachment of the security interest under [Uniform Commercial Code Section 9-203].

(b) If the office creates a certificate of title naming a lessor, consignor, bailor, or secured party as owner and the interest of the person named as owner is a security interest, the certificate of title serves as a security-interest statement that provides the name of the person as secured party. If the interest of the person named as owner in an application for a certificate of title delivered to the office in accordance with Section 9 is a security interest, the application is a security-interest statement that provides the name of the person as secured party. The naming of the person as owner on the application or certificate of title is not of itself a factor in determining whether the interest is a security interest.

(c) If a secured party assigns a perfected security interest in a vehicle, the receipt by the office of a security-interest statement providing the name of the transferee or its representative as secured party is not required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor. However, a purchaser of a vehicle subject to a security interest which obtains a release from the secured party indicated in the files of the office or on the certificate of title takes free of the security interest and of the rights of a transferee if the transfer is not indicated in the files of the office and on the certificate of title.

(d) This section does not apply to a security interest in a vehicle created by a person during any period in which the vehicle 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 goods of that kind.

(e) A security interest is perfected to the extent provided in [Uniform Commercial Code Section 9-316(d)]. A secured party may also perfect a security interest by taking possession of a vehicle only pursuant to [Uniform Commercial Code Sections 9-313(b) and 9-316(d)].

Comment

1. This section is derived from [Uniform Commercial Code Article 9] Sections 9-310(a), 9-516(a) and (b), 9-517, and 9-520(a), (b), and (c). One purpose is to establish a system for perfection of security interests by filing a security-interest statement with the office, even if the secured party cannot obtain and submit to the office a certificate of title. So long as this act

applies to the vehicle, under Section 4 or other choice of law rules, perfection may occur under this section without regard to the certificate of title. *See also* Comment to Section 25; Comment 3 to Section 2. Similarly, perfection does not require indication on a certificate of title, although that does confer an additional measure of protection. *See* Sections 15-19. Perfection occurs upon receipt of a sufficient security-interest statement and payment of the required fee, making the statement effective under Section 25(b) as a means of perfection under this section, whether or not it is indicated on a certificate of title, or even if a certificate of title has not otherwise been created. *See* Sections 4 and 25. Subsection (a) also makes clear that perfection under this section is the exclusive means of perfecting a security interest in vehicle, except as provided in subsections (d) and (e), which follow [Uniform Commercial Code Article 9] Sections 9-311(d) and 9-313(b).

2. This section is subject to qualifications and exceptions elsewhere in this act and the [Uniform Commercial Code], *e.g.*, providing for perfection by filing or possession in limited circumstances ([Uniform Commercial Code Article 9] Sections 9-311(d), 9-313(b)), requiring attachment as a prerequisite to perfection (Section 26(a), [Uniform Commercial Code Article 9] Sections 9-203, and 9-308(a)), and required authorization by the debtor for a filing (UCC Sections 9-509, 9-311(b)). This act is also subject to general rules in the [Uniform Commercial Code] governing assignments and the rights of third parties, *e.g.*, in [Uniform Commercial Code] Article 9 Part 4, and this is recognized in subsection (b).

3. Perfection under Section 26, without indication of the security interest on a certificate of title, would be effective against lien creditors, but not against a competing party who relies on the certificate of title pursuant to Section 19. In addition, certain competing buyers would prevail under Section 18. *See also* the impact of errors and omissions under Section 20.

4. Subsection (b) recognizes that a secured party, lessor, or bailor may be listed as owner on the certificate of title. This will be sufficient to perfect the interest of that person, including a security interest. This reflects current law. *See, e.g., In re Charles*, 323 F.3d 841 (10th Cir. 2003). The secured party, lessor, or bailor listed as owner may make application for a certificate of title indicating that person as owner, under Section 9.

5. If a secured party assigns a perfected security interest in a vehicle, receipt by the office of a security-interest statement under Section 25 providing the name of the transferee or its representative as secured party is not required to continue the perfected status of the security interest. However, a purchaser of a vehicle subject to a security interest that obtains a release from the secured party indicated in the files of the office or on the certificate of title takes free of the security interest and also takes free of the rights of a transferee if the transfer is not indicated in the files of the office and on the certificate. *See* subsection (c). For example, if a purchaser of the vehicle makes payment in full of the secured debt to the secured party indicated on the certificate of title and obtains a release, that debt would be discharged even if the debt and security interest had been assigned to another creditor.

This provision is modeled partly on [Uniform Commercial Code] Article 9 Sections 9-310(c) and 9-338 and makes clear that a failure to indicate a transfer of the security interest in the files of the office or on the certificate of title does affect the perfection or enforcement of the security interest in favor of the transferee, except that a purchaser of the vehicle or competing transferee of the security interest is entitled to rely on the certificate of title or files of the office and takes free of an interest not so indicated to the extent the purchaser or competing transferee gives value and obtains a release from the secured party indicated on the certificate of title or the files of the office. *See also* Sections 18, 19, and 20.

6. As noted above, subsections (d) and (e) follow [Uniform Commercial Code] Article 9 Sections 9-311(d), 9-313(b), and 9-316(d), to provide consistency with the [Uniform Commercial Code]. The reference to “goods of that kind” in Section 26(d) should be interpreted consistently with [Uniform Commercial Code] Section 9-311(d). To promote this consistency, the [Uniform Commercial Code] phrase “goods of that kind” is used instead of “vehicles of that kind”. Official Comment 4 to [Uniform Commercial Code] Section 9-311(d) states that “a secured party who finances an automobile dealer that is in the business of selling and leasing its inventory of automobiles can perfect a security interest in all of the automobiles by the filing of financing statement but not by compliance with a certificate-of-title statute.” Accordingly, assuming that a vehicle dealer is in the business selling (and not merely leasing) vehicles, whether a particular vehicle on the lot of automobile dealer is a “good of that kind” turns on whether the vehicle is inventory of the dealer held for sale or lease. For example, the phrase would include a trade-in vehicle that might be from a different manufacturer and of a different make or model from vehicles customarily sold or leased by the dealer if the trade-in vehicle is in fact held by the dealer for sale or lease.

SECTION 27. TERMINATION STATEMENT.

(a) A secured party indicated in the files of the office as having a security interest in a vehicle shall deliver to the office and, upon the debtor’s request, to the debtor, a signed termination statement if:

(1) there is no obligation secured by the vehicle subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vehicle; or

(2) the debtor did not authorize the filing of the security-interest statement.

(b) A secured party indicated in the files of the office as having a security interest in a vehicle shall deliver a signed termination statement to the debtor or the office upon the earlier of:

(1) [30] days after there is no obligation secured by the vehicle subject to the security-interest statement and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vehicle; or

(2) [14] days after the secured party receives a signed demand from an owner and there is no obligation secured by the vehicle subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vehicle.

(c) 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, within the time provided in subsection (b), shall deliver the written certificate of title to the debtor or the office with the termination statement. If the written certificate is lost, stolen, mutilated, or destroyed or is otherwise unavailable or illegible, the secured party shall deliver with the termination statement, within the time provided in subsection (b), an application for a replacement certificate of title meeting the requirements of Section 24.

(d) Upon the delivery of a termination statement to the office pursuant to this section, the security-interest statement and any indication of the security interest on the certificate of title to which the termination statement relates ceases to be effective. The files of the office must indicate the date [and time] of delivery of the termination statement to the office.

Legislative note: *The optional, bracketed language in subsection (b) allows a State to determine whether to require the office to maintain information in its files indicating the time of delivery for each termination statement. This determination may be affected by the procedural, staffing, and technical capabilities of the office.*

(e) A secured party is liable for damages in the amount of any loss caused by its failure to comply with this section and for the reasonable cost of an application for a certificate of title under Section 9 or 24.

Comment

1. “Termination statement” is defined at Section 2(a)(30). Upon termination of the effectiveness of a security-interest statement under this section, the office shall indicate in its files the termination of the security-interest statement, and that any subsequent secured party indicated in the files of the office has become the secured party of record. *See* Section 2(a)(25). *See also* Section 9 (application for a certificate of title that includes a direction to terminate a

security-interest statement must include a termination statement); Section 23 (termination without termination statement). This contemplates an “open drawer” system whereby the office files reflect all security-interest statements and termination statements filed within the period stated in section 28(a). Interested parties can then seek additional information based on the information in the office file, as needed to make a legal determination of the status of the security interests.

SECTION 28. DUTIES AND OPERATION OF FILING OFFICE.

(a) The files of the office must indicate the information provided in security-interest statements and termination statements received by the office under Section 25 or 27 for at least [10] years after termination of the security-interest statement under Section 27. The information must be accessible by the vehicle identification number for the vehicle and any other indexing methods provided by the office.

(b) The office shall send to a person that submits a record to the office, or submits information that is accepted by the office, and requests an acknowledgment of the filing or submission, an acknowledgment showing the vehicle identification number of the vehicle 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 must contain the vehicle identification number and be delivered by means authorized by the office.

(c) The office shall send or otherwise make available in a record the following information to any person that requests it:

(1) whether the files of the office indicate, as of a date [and time] specified by the office, but not a date earlier than [three] business days before the office received the request, any certificate of title, security-interest statement, or termination statement that relates to a vehicle identified by a vehicle identification number designated in the request; and

(2) the name of the owner of record and the effective date of all security-interest statements and termination statements indicated in the files of the office.

Legislative note: Optional, bracketed language in subsection (c)(1) allows a State to determine whether to require the office to specify a time as of which its response to a request for information relating to a security-interest statement, termination statement, or and request for information is effective. Additional bracketed language enables the State to determine an

appropriate limitation on the discretion of the office to determine the effective date of its response. The procedural, staffing, and technical capabilities of the office may affect these determinations.

(d) In responding to a request under this section, the office may communicate the requested information in any medium. However, if requested, the office shall send the requested information in a record that is self-authenticating under [cite applicable rule of evidence].

(e) The office shall comply with this section at the time and in the manner prescribed by the rules of the office but shall respond to requests under this section not later than [two] business days after the office receives the request.

Comment

1. Section 28 is derived from [Uniform Commercial Code Article 9] Sections 9-522 and 9-523. *See also* Comment to Section 27.

SECTION 29. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 30. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 31. SAVINGS CLAUSE.

(a) Except as otherwise provided in this section, this act applies to any transaction, certificate of title, or record involving a vehicle, even if the transaction, certificate of title, or record was entered into or created before the effective date of this act.

(b) A transaction, certificate of title, or record that was validly entered into or created before the effective date of this act and would be subject to this act if it had been entered into or created on or after the effective date of this act, and the rights, duties, and interests flowing from the transaction, certificate of title, or record remains valid after the effective date of this act.

(c) This act does not affect an action or proceeding commenced before the effective date of this act.

(d) A security interest that is enforceable immediately before the effective date of this act 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 act.

(e) This act does not affect the priority of a security interest in a vehicle if immediately before the effective date of this act the security interest is enforceable and perfected, and that priority is established.

SECTION 32. REPEALS. The following acts and parts of acts are repealed:

[add legislative note]

SECTION 33. EFFECTIVE DATE. This act takes effect