UNIFORM CERTIFICATE OF TITLE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

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With Prefatory Note and Preliminary Comments

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

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# UNIFORM CERTIFICATE OF TITLE ACT

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CERTIFICATE OF TITLE ACT

Prefatory Note

This 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 separate 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’ records, 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 be denied the convenience or economies of electronic records.

Industry practices have evolved significantly over the past 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 title transfer process. Greater uniformity in the core principles governing 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 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. 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 titles and paper titles; like revised Article 9, the Act is medium neutral, but it goes beyond mere neutrality to provide specific alternative and consistent 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 — and indicate they will continue to attend — 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 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 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 expanded 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. A section of this act (section 31) has been reserved for a possible, optional model provision if that is later deemed appropriate.

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. Consistency 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 the means for state titling practices that are more 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 12 of this Act and the Reporter’s Note thereunder describe the Act’s accommodation of electronic disclosures to satisfy statutes written in contemplation, at the time of enactment, of paper disclosures.

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. 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, security interests, and consumer protection are covered by the Uniform Commercial Code or consumer protection laws rather than this Act. The Act does not displace those laws as regards basic contract, 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.
CERTIFICATE OF TITLE ACT

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

SECTION 2. APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.

Unless displaced by the particular provisions of this [act], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

Preliminary Comments

This section is derived from Uniform Commercial Code (UCC) section 1-103(b). In addition, like the UCC, 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 3. DEFINITIONS.

(a) In this [act]:

(1) “Buyer” means a person that buys or contracts to buy an ownership [interest] in a vehicle.

(2) “Buyer in ordinary course of business” means a person that buys a vehicle in good faith, without knowledge that the sale violates the rights of another person in the vehicle, and in ordinary course from a person, other than a pawnbroker, in the business of selling vehicles of that
kind. A person buys a vehicle 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 a vehicle under a pre-existing contract for sale. Only a buyer that takes possession of the vehicle or has a right to recover the vehicle from the seller under [Uniform Commercial Code Article 2] may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires a vehicle 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 the 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 as a certificate of title or certificate of origin.]

(4) “Certificate of origin” means a record, created or authorized by a manufacturer or importer as the manufacturer’s or importer’s proof of identity of the vehicle, which [contains] a vehicle identification number and a description, including, as applicable, the make, model, model year, and body type.

(5) “Certificate of title” means the record, created or authorized by the office, or, when this [act] so provides, by an agency of another jurisdiction which is:

(A) evidence of ownership of a vehicle; and

(B) designated a certificate of title by the office that created or authorized it.

(6) “Create,” with respect to a certificate of title, means that the office brings the certificate of title into existence as follows:
(A) in the case of an electronic certificate of title, by making [or authorizing] the
record or records that constitute the electronic certificate of title; or

(B) in the case of a written certificate of title, by making [or authorizing] the
record or records that constitute the written certificate of title.

(7) “Delivery” means a voluntary [change] of possession of a record or its
transmission, by any reasonable means, properly addressed to the recipient and with the cost of
delivery provided. [In the case of an electronic record, the term means the transmission by
electronic means to the electronic mail address of the recipient.]

(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 [that is a record or
records] consisting of information stored solely in an electronic medium and retrievable in
perceivable form.

(10) “Electronic certificate of title” means a certificate of title that is a record or
records consisting of information that is stored solely in an electronic medium and 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 [for the purpose of
transferring ownership of the vehicle covered by the certificate.]

(12) “Importer” means a person authorized by a manufacturer to sell in the United
States new vehicles manufactured outside the United States.
“Lessee in ordinary course of business” means a person that leases a vehicle 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 vehicles 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 a vehicle or certificate of title covering a vehicle under a preexisting lease contract. Only a lessee that takes possession of the vehicle or has a right to recover the vehicle from the lessor under [Uniform Commercial Code Article 2A] may be a lessee in ordinary course of business. A person that acquires a vehicle 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. [A lessee in ordinary course of business does not lose that status solely because the certificate of title was not executed to the lessee.]

“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; and

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

“Manufacturer” means a person that manufactures, fabricates, assembles, or completes new vehicles. [The term includes a later-stage manufacturer.]
(16) “Office” means [insert name of relevant [department] [agency] in enacting state].

(17) “Owner” means a person having an ownership [interest] in a vehicle, [or an agent, nominee, or other representative acting or authorized to act for the person.]

(18) “Owner of record” means the owner [or owners] as indicated in the files of the office.

(19) “Ownership” means legal title, as determined pursuant to this [act] as supplemented by other law. The term [does] [may or may] not include a beneficial [or equitable] ownership interest.

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

(21) “Purchase” means taking 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 trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or

(D) 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 first secured party indicated in the files of the office.

(26) “Security interest” means an interest in goods that secures payment or performance of an obligation. “Security interest” includes any interest of a [consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note] in a transaction that is subject to [Uniform Commercial Code Article 9]. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods 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 goods under [Uniform Commercial Code Article 2 or 2A] to retain or acquire possession of the goods 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 goods notwithstanding shipment or delivery [of goods] 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 pursuant to [Uniform Commercial Code Section 1-203].
(27) “Security interest entry form” means a record or records, created or authorized by a secured party, that meets the requirements of Section 26(b).

(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) “Specialized mobile equipment” means 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 but not limited to: 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. The term does not include a house trailer, dump truck, truck-mounted transit mixer, truck-mounted crane or shovel, or other mobile equipment designed for the transportation [on a road or highway] of individuals or property [to which machinery has been attached].

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

(31) “Termination statement” means a record or records, created or authorized by the secured party which:
(A) identifies the security interest entry form to which it relates; and

(B) indicates either that it is a termination statement or that the identified security

interest entry form is no longer effective.

(32) “Title brand” means any 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.]]

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

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

(35) “Vehicle” means any type of motorized, wheeled device in, upon, or by which

an individual or property may be lawfully and customarily transported on a road or highway, or a

commercial, recreational, travel, or other trailer. The term does not include:

[(A) manufactured housing;]

(B) an implement of husbandry;

(C) a [motorized] wheelchair or similar device designed for use by an individual

having a physical impairment; or

(D) specialized mobile equipment.

(36) “Written certificate of origin” means a certificate of origin [that is a record or

records] consisting of information that is inscribed on a tangible medium.

(37) “Written certificate of title” means a certificate of title [that is a record or

records] consisting of information that is inscribed on a tangible medium.

(b) The following definitions in other laws apply to this [act]:

(1) “Agreement,” UCC Section 1-201(b)(3).
The definition at Section 3(a)(2) incorporates revised Uniform Commercial Code (UCC) Article 1 Section 1-201(b)(9) (2002 uniform text).

Section 3(a)(2) makes clear that a certificate of origin is a temporary record that describes 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 a 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, 7, 8, 12, 13, and 21.

The definition of “Certificate of title” at Section 3(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. Portions of the definition are also derived from UCC Article 9 Section 9-102(a)(10). One change

Legislative Note:

If a state has not enacted the 2002 uniform text of Article 1, the references to Article 1 section numbers will need to be adjusted to reflect state law.
is to define certificate of title as a “record,” meaning it can be in either paper or electronic form. The definition of “certificate of origin” is similar in this regard.

In addition this definition of certificate of title includes receipt by the office of a security interest entry form pursuant to Section 26. This is needed because it may be necessary to perfect a security interest pursuant to Section 27(a), by receipt of a security interest entry form under Section 26, before the office has received an application for a certificate of title under Section 7 and 8. Thus, in the absence of a certificate of title created under Sections 8 and 9, a security interest entry form received pursuant to Section 26 will create a certificate of title for purposes of this [act], including choice of law under Section 4 and perfection under Section 27.

The definition requires a certificate of title to have four basic elements: (1) a record; (2) created or authorized by the appropriate office of this State; (3) evidencing title to a vehicle or indicating perfection of a security interest; and (4) created pursuant to provisions in this [act] providing (in conjunction with UCC Article 9) for perfection of security interests. See also the requirements for creation of a certificate of title pursuant to this [act], at Sections 8, 9, and 10; provisions governing security interest entry forms at Sections 26, 27, and 28; choice of law rules at Section 3.

The definition of “certificate of title” is different from UCC Article 9 Section 9-102(a)(10) in some important ways. The Article 9 definition incorporates by reference the standards of the applicable certificate of title law. COTA is that law, and therefore cannot directly use the Article 9 incorporation-by-reference approach. Moreover, as noted this [act] provides for perfection of a security interest on receipt by the office of a security interest entry form, subject to the additional UCC Article 9 requirements, even if the security interest is not otherwise indicated on a certificate of title or in the office files or the office never receives an application for a certificate of title. See Sections 3(b), 8, 26, and 27. While this is consistent with Article 9 Section 9-102(a)(10), this [act] requires a definition that directly encompasses these functions, while Article 9 can simply tie into this [act] by reference. Therefore, receipt by the office of a security interest entry form pursuant to Section 26 creates a certificate of title within the definition at Section 3(a)(5), and triggers application of this [act] pursuant to Section 4, even if there is no other record covering the vehicle in the files of the office.

Pursuant to Section 10(c), the certificate of title must provide for reassignment of title by execution of the certificate of title, or a related form, including dealer reassignments and secured powers of attorney, e.g., by execution of a form that is part of or related to the certificate of title. See the definition of “execute.”

Section 3(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,” Section (3)(a)(10) and (35); Section 9 (obligation of the office to create a certificate of title). As noted, an application for a certificate of title can be created by receipt in the office of a security interest entry form. See Sections 4, 26,
A certificate of title can also be created by the office making a file pursuant to Sections 8, 9, and 10, or by issuance of a written certificate of title pursuant to those sections.

Under Section 3(a)(10), “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 Section 10 and Section 23. This definition is modeled on the UCC 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 Article 9, while continuing to recognize the traditional primacy of a written certificate of title if one exists. See Sections 14, 17, 19, 24-27; and the definition at Section 3(a)(35).

The definition of “execute” at Section 3(a)(11) applies only when used to denote execution of a certificate of title or certificate of origin and not, e.g., as the term is used in Section 3(a)(26).

The definition of “lien creditor” at Section 3(a)(14) is taken directly from UCC Article 9 Section 9-102(a)(52), for purposes of consistency with the UCC. By its terms the list of examples at Section 3(a)(14)(A) is illustrative, not exclusive. Other examples include a garnishor or judgment lien creditor.

The definition of “person” at Section 3(a)(20) is taken from UCC Article 1 Section 1-201(b)(27), for purposes of consistency with the UCC. The list is illustrative, not exclusive. Another example would be the trustee of a statutory trust.

The definition of “Purchase” at Section 3(a)(21) is identical to UCC Section 1-201(b)(29) (2002 uniform text), for purposes of consistency; see also Section 1-201(32) of old Article 1. Some parts of this definition are directed at purchases of instruments or investment securities or the like, and may not be applicable to vehicles, e.g., the words “discount,” “negotiation,” and “issue or reissue.” The UCC definition is nonetheless included in its entirety for purposes of consistency with the UCC.

The definition of “Purchaser” at Section 3(a)(22) is identical to UCC Article 1 Section 1-201(b)(30) (2002 uniform text), for purposes of consistency with the UCC.

The terms “Transfer” and “Transferee” at Section 3(a)(31) and (32) denote any conveyance of an interest, whether voluntary or by operation of law, in contrast to a “purchase,” which denotes a voluntary conveyance.

Two fundamental purposes are evident in these definitions: (1) Allowing purely electronic certificates of title and origin and related documentation (with a tiered option provided at Sections 8, 9, 10, and 19 to allow certain persons to request a paper certificate); and (2) allowing some transactions relating to written certificates of title to be conducted electronically (e.g., assigning certificates of origin, and perfection of security interests under Sections 26 and

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Thus electronic records may be used to effectuate electronic transactions, and also transactions that involve written certificates of title.

This draft contemplates the filing of paper and electronic security interest entry forms to perfect security interests (Sections 26 and 27), and conducting security interest and title searches, without any other certificate of title, based on the files of the state certificate of title agency (designated herein the office). See Sections 4, 23 and 26. 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 but not necessarily either a written or electronic certificate of title. It also includes receipt by the office of a security interest entry form, pursuant to Sections 4 and 26. An electronic certificate of title is a certificate of title being maintained solely in electronic form; a written certificate of title is one that exists in written form. Note that, unless stated otherwise (as in Section 3), “certificate of title” means one created in this state.

Aside from the bracketed language, the definition of “secured party” at Section 3(a)(25) is identical to UCC Article 9 Section 9-102(a)(72).

The definition of “sign” at Section 3(a)(28) is derived from the definition of “signed” in UCC Article 1 Section 1-201(b)(37) (2002 uniform text) and the definition of “electronic signature” in the Uniform Electronic Transaction Act (UETA) Section 3(8). It is intended to encompass both electronic and written signatures. As used in Section 3(a)(27), the term “execute” is derived from UCC Article 1 Section 1-201(b)(37) and is intended to have its common meaning, as used in Article 1, and not that in the definition at Section 3(a)(11) of this [act].

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

(a) For the purposes of subsections (b), (d), and (e), “certificate of title” means a certificate of title as defined in Section 3(a)(5), or a [certificate of title] created or authorized by a government agency of any jurisdiction which is permitted to create or authorize a certificate of title.

(b) The local law of the jurisdiction 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 there
is no other relationship between the jurisdiction and the vehicle or its owner.

(c) A vehicle becomes covered by a certificate of title when an application for a
certificate of title and the applicable fee are received by the office in accordance with this [act].

(d) For purposes of this section, receipt of a security interest entry form that meets the
requirements of Section 26 constitutes an application for a certificate of title. A security interest
entry form is sufficient for this purpose only if the location of debtor is in this state or the debtor
has a place of business in this state, and an existing certificate of title covering the vehicle has
not been created in another state.

(e) A vehicle ceases to be covered by a certificate of title in this state at the earlier of the
time the certificate of title ceases to be effective under this [act] or the time the vehicle
subsequently becomes covered by a certificate of title, other than a certificate of title initiated
only by a security interest entry form, created in another state.

(f) Except as otherwise provided in this section, if a vehicle is not covered by a
certificate of title, but a certificate of origin has been created for the vehicle, this [act] applies to
the certificate of origin if the parties have chosen the law of this state, even if this state bears no
other relation to the certificate of origin.

(g) If a vehicle is not covered by a certificate of title, in the absence of an agreement
effective under subsection (d), the rights and obligations of the parties are determined by the law
that would be selected by application of this state’s conflict of laws principles.
Preliminary Comments

Subsections (a) and (b) are derived from UCC Section 9-303. One purpose of this [act] is to conform to and avoid conflicts with the UCC, including Article 9.

The language of Section 9-303 has been revised in subsections (a) and (b) to limit the application of this [act] to “vehicles” (as defined in Section 2(a)(28)) rather than applying to “goods” as in Article 9 Section 9-303. This reflects the limitation of this [act] to vehicles. See, e.g., Sections 3(a)(4), 3(a)(5), 3(a)(15), 3(a)(35), 8-10, 19. Other deviations from Section 9-303 were also necessary, but the language of subsections (a) and (b) tracks Section 9-303 as closely as possible.

As a result of the definitions at Section 3, and the scope and choice of law provisions at Section 4, this [act] would apply only to a “vehicle” that is “covered” by a “certificate of title” created in this state.

A vehicle becomes covered by a certificate of title when an application or a security interest entry form and any required fees are delivered to the office in accordance with the requirements of this [act]. See Sections 8, 9, 26, 27 and 28. At that time this [act] would apply to all issues relating to the certificate of title or otherwise governed by this [act]. See Sections 26, 27, and 28 regarding the effect of a security interest entry form. Section 4 provides a choice of law to establish the applicability of Sections 8, 9, 26, 27, and 28.

Receipt by the office of a security interest entry form constitutes an application for a certificate of title, and under subsection (c) the vehicle becomes covered by a certificate of title at that time, making the [act] applicable under subsection (b) and (if all other requirements are met) perfecting the security interest under Sections 26 and 27. If the debtor subsequently obtains a certificate of title in another state, this security interest will remain perfected under this [act] and Article 9 Section 9-316(d), even if a certificate of title was never created in this state. The priority of the security interest would be determined under Article 9.

Subsections (d) and (e) are derived from revised UCC Article 1 Section 1-301(c) and (d) (2002 uniform text). They provide a back-up rule to subsections (a) and (b), applicable if there is no certificate of title (or application for a certificate of title under subsection (c)) to trigger subsections (a) and (b). Thus, e.g., subsections (d) and (e) provide for general choice of law rules to apply to certificates of origin, which are not created by a state, prior to creation of or application for a certificate of title.

Definitional Cross Reference:

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

“Domestic transaction.” UCC Section 1-301(a)(1).
“International transaction.” UCC Section 1-301(a)(2).

“Receipt of Security Interest Entry Form.” Section 26.

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, the government of a country other
than the United States, an Indian tribe, this state, or a [local government] in this state.

Preliminary Comments

This section is derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft
Act of 1955 (UMVCT) Section 2. UMVCT Section 2 additionally provides specific exclusions
for construction equipment, farm equipment, golf carts, boat trailers, and the like. These have
been removed from Section 4, as redundant in view of the definition of “vehicle” at
Section 3(a)(35).

SECTION 6. VEHICLE IDENTIFICATION NUMBER. The office must record as the
vehicle identification number [in the files of the office] the vehicle identification number
assigned by its manufacturer or importer.

Preliminary Comments

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., revised Article 1 Section 1-303 (2002 uniform text) (old Article 1
Section 1-205). A purpose of this [act] is to provide legal principles consistent with these
practices.

SECTION 7. CERTIFICATE OF ORIGIN.

(a) The manufacturer or importer that creates or is authorized or required to create a
certificate of origin for a vehicle, upon transfer of ownership of the vehicle, shall execute a
certificate of origin to the transferee or deliver an executed certificate of origin to the office.

Each succeeding transferor shall execute to the next transferee or sign and deliver to the office all known certificates of origin covering the vehicle.

(b) For purposes of obtaining a certificate of title, a buyer may require that its transferor execute to it a written certificate of origin. If a written certificate of origin is created, any electronic certificate of origin covering the vehicle is cancelled and replaced by the written certificate of origin.

**Preliminary Comments**

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.

See Section 4(d) and (e) for the choice of law rules that determine whether this [act] applies to a certificate of origin.

A “later stage manufacturer” is a purchaser to which ownership of a vehicle is transferred for further manufacture, including fabrication, assembly, or other completion.

Under this section, if a manufacturer or importer of a new vehicle transfers ownership of the vehicle to a later stage manufacturer, the 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 a new vehicle to another later stage manufacturer or to a dealer, distributor, or other purchaser, the transferor is required to execute all known certificates of origin to the purchaser.

And if a dealer, distributor, or other purchaser transfers ownership of a new vehicle after manufacture by a later stage manufacturer, the transferor is required execute to the next purchaser all known certificates of origin covering the vehicle. Thus, Section 6 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.
SECTION 8. APPLICATION FOR CERTIFICATE OF TITLE.

(a) Subject to Section 18, an application for a certificate of title:

(1) must contain:

(A) the applicant’s name and physical address, and, if different, an address for receiving written communications;

(B) the vehicle identification number;

(C) as required by the office, the make, model, model year, and body type;

(D) an indication of all security interests in the vehicle which are known to the applicant;

(E) any title brand known to the applicant;

(F) if a transfer, the transferor’s and transferee’s names, physical addresses, and, if different, addresses for receiving written communications, and the date of the transfer; and
(G) if the application includes a direction to terminate a security interest entry form, the secured party’s name and address for receiving communications; and

(2) if a transfer, may contain electronic communication addresses of the transferor and transferee.

(b) If application for a certificate of title includes a transfer of ownership or a direction to terminate a security interest entry form, except as otherwise provided in Section 20, 21, or 24, the application for a certificate of title must be accompanied by all known, existing certificates of origin and certificates of title covering the vehicle, created or authorized in any jurisdiction, executed to the applicant or other transferee by the transferor. If the application includes a direction to terminate a security interest entry form, except as otherwise provided in Section 24, the application must be accompanied by a termination statement under Section 28.

(c) If the application does not include a transfer of ownership or a direction to terminate a security interest entry form, except as otherwise provided in Section 25, an application for a certificate of title must be accompanied by all known, existing certificates of origin and certificates of title covering the vehicle, created or authorized in any jurisdiction, indicating the applicant as owner of the vehicle.

(d) If there is no known, existing certificate of origin or certificate of title covering the vehicle, created or authorized in any jurisdiction, the application must be accompanied by all known, existing [information or] records of the vehicle’s ownership. [Information from these sources is part of the application for the certificate of title and must be indicated [retained] in the files of the office.]

(e) A power of attorney, [including a simple power of attorney,] may be used in meeting
the requirements of this section, except as required under law other than this [act].

(f) [AAMVA photo copy procedure -- Jim Nance 703-522-4200]

(g) A security interest entry form is an application for a certificate of title for purposes of Section 4, but is not subject to this section.

(h) The office may not refuse to accept an application for a certificate of title in the following form and format except for a reason set forth in Section 9:
APPLICATION FOR
[STATE] CERTIFICATE OF
TITLE FOR A VEHICLE

Vehicle Model Year and Make:

Body Type: Model:

Vehicle Identification Number:

License Tag: Decal Number:

License Tag Expiration Month:

Sales Price: $ (Note: Sales price is not to include any credit or discount given for a trade in. Sales price verification documentation is required when titling a new vehicle.)

Applicant's Name(s) (Transferee if a transfer):

Physical Address:
City: State: Zip:
Address for receiving communications, if different:

Drivers license numbers of all applicants or, if applicant is not an individual, the applicant’s Federal Employer Identification number:

Name of Seller or Other Transferor:

Physical Address:
City: State: Zip:
Address for receiving communications, if different:

THIS VEHICLE IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF:

Name: Name:
Address: Address:

City: State: Zip: City: State: Zip:

Date paid in full (if applicable):

Known Title Brands:

I, the undersigned, under the penalties of perjury do solemnly swear (or affirm) that I am the owner or legal agent of the owner of the above described vehicle and that the statements contained herein are true.

Applicant or Legal Agent of Applicant

Applicant or Legal Agent of Applicant

State ___________, County of §:
Subscribed and sworn to before me this _______ day of ______________, ________
The applicant’s name need not be precise or determined in accordance with UCC Article 9 Section 9-503. The effect of errors or omissions is governed by Section 18.

This section provides the basic requirements for an application for a certificate of title. It is supplemented by Sections 14, 20, 21, 24, and 25, which provide separate requirements for certain specified circumstances, e.g., an application under Section 25 for a replacement certificate of title when the previous certificate of title has been lost, stolen, or destroyed.

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 9.

SECTION 9. CREATION OF, REFUSAL TO CREATE, AND REVOCATION OF CERTIFICATE OF TITLE.

(a) Except as otherwise provided in this section, upon submission of the information required for an application pursuant to Section 8, and payment of all applicable fees and taxes, the office shall create a certificate of title. The certificate of title must show the transferee as owner of record and the existence of any outstanding security interests disclosed under Section 8 or for which the office has received a security interest entry form under Section 26, or which is otherwise indicated in the files of the office [or on a certificate of title created in any jurisdiction and submitted to the office].

(b) The office may create a written certificate of title or [, if the office authorizes or creates electronic certificates of title,] an electronic certificate of title, at the option of the secured party of record or, if no security interest is indicated in the files of the office, at the option of any owner of record. If no request is made by an owner or secured party, the office may create either a written certificate of title or an electronic certificate of title.
The office may reject an application for a certificate of title only:

(1) for a failure to satisfy the requirements of Section 8; or

(2) if [there is credible information submitted to the office that] [there are grounds for concluding that] the application is fraudulent or would facilitate a fraudulent or illegal act or the application otherwise fails to comply with law other than this [act].

Rejection of an application affects only the applicant's ownership and does not alter the receipt or effects of a security interest entry form under Sections 4, 26, and 27.

If the office has created a certificate of title, it may revoke the certificate of title only for a failure of the application to meet the requirements of this [act], after providing an opportunity for a hearing, at which the applicant and any other interested party may present evidence in support of the application. The office shall provide at least [30] days’ notice of the opportunity for a hearing, served [in person or sent by regular mail] [as required for service of process in a civil action] to the applicant and to the owner of record and all secured parties indicated in the files of the office. Revocation of a certificate of title pursuant to this section affects only the ownership entered on the certificate of title. Revocation does not alter the receipt or effects of a security interest entry form under Sections 4, 26, and 27 or [Uniform Commercial Code Article 9].

Preliminary Comments

See also the standards for delivery of a certificate of title at Section 19. The determination of the first secured party as indicated in the files of the office is an administrative matter for purposes of this section, and is not determinative of priority issues for purposes of UCC Article 9. The effect of a security interest entry form is governed by Sections 4 and 27.

This section requires the office to create a certificate of title pursuant this [act], upon submission of an application meeting the requirements of Section 8, 9, 20, 21, 24, or 25.
Other provisions, for example Section 15 (Adverse Claims) and Section 17 (Transferee of Vehicle Covered by Certificate of Title) provide substantive rules to govern the resolution of competing claims, e.g., in contract disputes, but are not intended to be addressed or resolved by the office in the application process.

The office should not be liable for violation of these 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 judicial review of a decision of the office to create or refuse to create a certificate of title.

SECTION 10. CONTENTS OF CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Section 18, a certificate of title must contain:

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

(2) the name and physical address of the owner of record, and the mailing address of the owner of record, if different;

(3) except as otherwise provided in Section 27(b), the name and address of the secured party of record showing that status and an indication of the existence of any additional security interests;

(4) the vehicle identification number;

(5) a description of the vehicle including, as required by the office, make, model, model year, and body type;

(6) the vehicle’s odometer reading at the time of the latest transfer of ownership, if required by Section 12 [and] law other than this [act]; and

(7) all title brands known to the office, as required by [this act or] law other than this [act], including brands previously indicated on a certificate of title or certificate of origin created in this state or another jurisdiction or in an application submitted pursuant to Section 8.
(b) The indication of a title brand on the certificate of title may use abbreviations, but not symbols, and must identify the jurisdiction that originated the title brand. If the meaning of the previous title brand is not easily ascertainable or cannot be accommodated on the certificate of title, the certificate of title may state: “Previously branded in [jurisdiction that previously indicated the title brand].”

(c) If a vehicle was previously registered for use in a jurisdiction outside the United States, the office shall include a notation on the certificate of title indicating that the vehicle was previously registered in that jurisdiction.

(d) A certificate of title must provide a form for subsequent execution of the certificate by the owner.

Preliminary Comments

“Title brand” is defined in Section 3(a)(32). See also Section 8, requiring any known title brand to be identified in the application for a certificate of title. Any title brand included 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. Section 31 is reserved for a state that wants to incorporate its title brand requirements in this [act].

In common usage, a “title brand” is a notation on the face of a certificate of title that provides notice to subsequent purchasers of the damage, condition, or prior use of the vehicle. The 51 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.

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. Furthermore, once a title brand is required, this [act] requires that the title brand appear on the face of the certificate of title and all subsequent certificates of title issued for the same vehicle by the State. Additionally, once a title brand is required, the title brand of one state must be “carried forward” on the face of a certificate of title subsequently issued by any other state with respect to the same vehicle.
SECTION 11. CERTIFICATE OF TITLE AND CERTIFICATE OF ORIGIN NOT SUBJECT TO JUDICIAL PROCESS.

(a) This [act] does not prohibit or preclude a lawful repossession of or levy on a vehicle or attaching and foreclosing of a statutory or common law lien on a vehicle. However, a certificate of title or a certificate of origin does not by itself provide a right or a means to obtain possession of the vehicle covered by the certificate, and is not itself subject to garnishment, attachment, levy, replevin, or other judicial process against property. The absence of an indication of a statutory or common law lien on a certificate of title does not invalidate the statutory or common law lien.

(b) This section does not relieve a person of any duty under this [act] or law other than this [act], or preclude any in personam remedies.

Preliminary Comments

This section is derived from Section 9 of the UMVCT. It makes clear that enforcement of a lien by judicial process must be effected against the goods, not the certificate of title. 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 wrongly withheld by a third party, there may be recourse under Section 16, 17, 19, 20, 21, 24, or 25. For example, a lien creditor could seek possession of the vehicle using legal process, and then obtain a certificate of title under Section 21 or 24; a buyer whose seller wrongfully fails to execute the certificate of title can obtain a new title under Section 24.

[Although a lien is not invalidated by its omission from the certificate of title, a transferee who takes by execution of the certificate of title may take free and clear of a lien not noted on the certificate of title, under Section 16.]
SECTION 12. ODOMETER DISCLOSURE.

(a) If required under federal law a certificate of title, when created and when executed, must contain or be accompanied by a disclosure of the vehicle’s odometer reading, and other information as required to be provided by the transferor when ownership of the vehicle is transferred. The disclosure must provide a space for any other information required to be disclosed on or to accompany the certificate of title under law other than this [act].

(b) Signing a record that provides the information required for disclosure of an odometer reading under federal law satisfies the requirements of this section[, but this [act] is otherwise subject to [refer to state odometer law]].

Preliminary Comments

The purpose of this section 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 a vehicle. See, e.g., 49 C.F.R. Section 580.5. 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. However, a general reference to those requirements may be helpful in alerting interested parties to the federal requirements. That is one purpose of this section.

In addition, 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. This has now been clarified somewhat. The NHTSA has indicated that an electronic disclosure containing the proper information will 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, providing some indication that an electronic disclosure satisfies 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). This is consistent with the federal Electronic Signatures in Global and National Commerce Act (ESIGN), Pub. L. 106-229 (June 30,

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

SECTION 13. SUBMISSION OF ADDITIONAL INFORMATION.

(a) Even if the requirements for a certificate of title or an application for a certificate of title covering a vehicle have not been met, the office may accept submissions of information relating to the vehicle for indication in the files of the office.

(b) A submission of information under this section must include, to the extent practicable, the information Section 8 requires for an application for a certificate of title. 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 then designate the lessee or the lessor, or both, as a person to receive information relating to the vehicle or certificate of title.

(c) As a condition of receiving information under this section, [to effectuate the law of this state] the office may require the applicant to provide any other information and documentation, and may require a bond in the form and amount determined by the office. The bond must provide for indemnification [of any secured party or other interested party] against any expense, loss, or damage resulting from the submission and indication in the files of the office of the information.

(d) A submission of information under this section and its indication in the files of the office is not a certificate of title and does not provide a basis for transferring or determining ownership of a vehicle.
[(e) Law other than this [act] may require submission of information under this section as the basis for payment of excise taxes relating to vehicles or fees required for issuance or renewal of license tags.]

**Preliminary Comments**

The purpose of this section is to allow a procedure for registration of information by the office for purposes not related to certificate of title transactions. Some states use registration as a trigger for other laws or requirements, e.g., relating to taxes or exhaust emissions. This section accommodates that function. An 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 order to allow the purchase of license tags. Another example would be a purchaser of a 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 purchase of license tags for the vehicle. The office should be cautious to limit the use of registrations and not allow this procedure to be used as a substitute for certificates of title.

This section is derived partially from the UMVCT Section 11. The requirement for a bond at subsection (c) is derived from UMVCT Section 11(b). The bracketed language in subsection (c) is intended to provide standards for the conditions on registration that can be imposed pursuant to that subsection: Making clear that conditions can be imposed only to effectuate state law, but for that purpose as the office deems appropriate; and any requirement for a bond is at the discretion of the office. The final bracketed language is an alternative, streamlined but not as elaborate in terms of the balance between standards and discretion.

Choice of law concerns with respect to registration under old Article 9 Section 9-103(2)(b) were resolved in revised Article 9 Section 9-303 and do not exist under Section 4. Therefore there are no choice of law implications relating to certificates of title as a result of registration under this section.

**SECTION 14. VOLUNTARY TRANSFER OF OWNERSHIP.**

(a) A purchaser of a vehicle [located in this state and] covered by a certificate of title created in any jurisdiction may require the transferor to execute the certificate of title to the purchaser pursuant to this [act]. [A person authorized to execute the certificate of title shall, as promptly as practicable and in compliance with this [act] and law other than this [act], execute
the certificate of title to the purchaser.]

(b) Execution of the certificate of title to the purchaser by the transferor [or a person
authorized by the transferor to execute the certificate of title] transfers the transferor’s ownership
of the vehicle to the purchaser.

(c) Except as otherwise provided in this [act], as between the parties to the transfer and
their assignees and successors, a transfer of ownership is not rendered ineffective by a failure to
execute the certificate of title as provided in subsection (a), but a transfer without execution of
the certificate of title is not effective as to other persons claiming an interest in the vehicle, until
the requirements of subsection (a) are satisfied.

Preliminary Comments

Subsections (a) and (b) are intended to provide a simple baseline rule for transfers of
ownership to vehicles covered by a certificate of title. Subsection (b) makes clear that ownership
is transferred immediately upon execution of the certificate of title, even though an application
for a new certificate of title has not been made. 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 may not be effective as to third parties. However, this is subject to the
rights of a good faith purchaser for value or a buyer in ordinary course of business. See also
Sections 16-21. For example, rights under Section 14(c) are subject to claims asserted under
Sections 16 and 17.

This [act] is supplemented by otherwise applicable law, for example the law of agency.
Therefore the obligations and rights recognized in this section can be exercised by authorized
representatives of the transferor and purchaser.

Section 14(a) provides the purchaser a right to execution of the certificate of title upon
purchase of a 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. Subsection (c) recognizes that
ownership can also be transferred by other means, e.g., by 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 lien
creditor of the transferor).
See also the rights of transferees under Section 17, which specifies that a transferee that does not obtain execution of the certificate of title takes subject to interests indicated on the certificate, except in certain cases where the transferee is a buyer in ordinary course of business. Thus Section 14(c) is subject to Section 17.

SECTION 15. NOTICE TO OFFICE WITHOUT APPLICATION.

(a) A transferor or transferee may notify the office of the transfer by submitting a record of the executed certificate of title or other signed record evidencing the transfer in accordance with standards and procedures established by the office. [The record must include the information required by Section 8.] Upon receipt of the record, the office shall amend its files to reflect the transfer and index the record. This record is not effective as to other persons claiming an interest in the vehicle until the requirements of Section 14(a) are satisfied.

(b) A notice, record, or file created pursuant to this section is not a certificate of title or an application for a certificate of title.

Preliminary Comments

Subsection (a) provides a basic legal framework for providing notice of ownership transfers to the appropriate state office, without application for a certificate of title under Section 8. This is intended to supplement Sections 8 and 9, and (as relevant) Sections 20, 21, 24, and 25, incorporated by reference. See also Sections 22-23. The purpose is to allow a transferor or transferee to provide notice to the office without meeting the requirements for an application under Section 8.

Subsection (b) makes clear that this notice procedure is not a substitute for an application for a certificate of title pursuant to Section 8. To obtain a certificate of title pursuant to Section 9 reflecting a transfer, the transferee of the vehicle must submit to the office the executed certificate of title or other signed record evidencing the transfer, and the information required by Section 8, or any other documentation required by the office in accordance with Section 20, 21, 24, or 25 as applicable, including submission of any required fee and tax. Subsection (a) merely provides a mechanism for providing notice to the office for informational purposes, for whatever purposes the office may desire; subsection (a) does not impose any resulting legal consequences. The legal effects of this notice are left to law other than this [act]. The office that receives this information should provide a procedure to identify, expunge, or segregate contested information.
in appropriate circumstances.

SECTION 16. SECURITY INTERESTS NOT NOTED ON CERTIFICATE OF TITLE; VOIDABLE TITLE

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

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

(2) does not have notice of the security interest [or lien] in the vehicle.

(b) A purchaser of a vehicle acquires all interests that the transferor had or had power to transfer, except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person having voidable title to a vehicle has power to transfer a good title to a good faith purchaser for value. When ownership of a vehicle has been transferred in a transaction of purchase the purchaser has the power to transfer good title even though:

(1) the transferor was deceived as to the identity of the purchaser;

(2) the transfer was in return for a check that was later dishonored;

(3) it was agreed that the transaction was to be “cash sale;”

(4) the transfer was procured through fraud punishable as larcenous under the
criminal law; or

(5) there is no execution of a certificate of title.

**Preliminary Comments**

Subsection (a) is patterned on UCC Article 9 Section 9-337, but with important differences: Subsection (a) applies to intrastate sales, while Section 9-337 applies only to interstate scenarios; unlike Section 9-337, subsection (a) allows a purchaser 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 purchaser). However, subsection (a) also imposes requirements on the purchaser not found in Section 9-337: Execution of the certificate of title; good faith; reasonable commercial standards of fair dealing; and a lack of notice (compared to only the lack of knowledge required by Section 9-337). These requirements assure that only the most innocent and prudent purchaser will qualify for the exceptional protection provided by this section. Moreover, a purchaser who prevails under subsection (a) will be subject to a comparative negligence standard under subsection (b), if the purchaser failed to exercise ordinary care.

Subsection (c) also allows the purchaser to take free of adverse ownership claims and lien creditors whose interests are not indicated on the certificate of title executed to the purchaser. Subsection (c) is designed to be consistent with UCC Section 2-403, to protect good faith purchasers for value, so as to conform certificate of title issues to the equivalent rules in UCC Article 2. See also Sections 17 and 27; Article 2A Sections 2A-314 and 2A-315. “Notice” for purposes of this section is defined at UCC Section 1-202 (2002 uniform text), as actual knowledge or “reason to know;” “value” is defined at UCC Section 1-204. Failure of a purchaser to obtain execution of a certificate of title does not bar good faith purchaser status.

Together Sections 14-18 comprise a package that accommodates electronic and informal transfers while recognizing the primacy of a written certificate of title and protecting buyers in the ordinary course of business. Execution of an electronic certificate of title under Section 14(a) and (b) would have priority over an informal transfer under Section 14(c), while execution of a written certificate of title under Section 16(a) would have priority over both.

Section 16(a) allows a purchaser (other than a dealer) to rely on a certificate of title in a commercially reasonable purchase of a vehicle for value and without notice of an adverse claim not indicated on the certificate of title. Other evidence of reliance is not required: Section 16(a) requires only that the “purchaser” (as defined in Section 3(a)(22)) take delivery of the vehicle for “value” and without “notice” of the adverse claim after a valid certificate of title has been created without an indication of the adverse claim. This resolves, in favor of such a purchaser, conflicts between this purchaser and a former owner, secured party, or other claimant whose interest may be superior to the purchaser’s transferor. As noted, Section 16(a) is similar to Article 9 Section 9-337, except that Section 16(a) applies to intrastate transfers and imposes additional burdens on the purchaser.
SECTION 17. RIGHTS OF TRANSFEREE OF VEHICLE COVERED BY
CERTIFICATE OF TITLE.

(a) Except as otherwise provided in this section or in Section [14,] 16, [18, 26, or 27,] a
transferee of a vehicle takes subject to a valid interest in the vehicle indicated on the certificate of
title and, if the certificate of title contains a statement that the vehicle is or may be subject to
security interests not shown on the certificate of title, a valid security interest not so indicated.

(b) A buyer in ordinary course of business or a lessee in ordinary course of business of a
vehicle takes free of a security interest created by the buyer’s seller or the lessee’s lessor,
including a security interest indicated on the certificate of title, even if the security interest is
perfected, the buyer or lessee knows of its existence, and the certificate of title was not executed
to the buyer or lessee.

(c) Entrusting of a vehicle to a merchant that deals in vehicles gives the merchant the
power to transfer all rights of the entruster to a buyer in ordinary course of business or, to the
extent of the lessee’s interest, to a lessee in ordinary course of business, even if the entruster does
not execute the certificate of title to the buyer or lessee.

(d) In this section, “entrusting” includes any relinquishment of possession and any
acquiescence in retention of possession of the vehicle regardless of any condition expressed
between the parties to the relinquishment or acquiescence and regardless of whether the
procurement of the entrusting or the possessor’s disposition of the vehicle have been such as to
be larcenous under the criminal law.
Preliminary Comments

Subsection (a) states the basic common law rule of assignment, which also runs throughout the UCC: Subject to specified exceptions, the transferee takes the rights of the transferor. See also Sections 14 and 16. Subsection (a) also reflects the Article 9 principle that rights under the certificate of title are paramount. See, e.g., Article 9 Sections 9-311, 9-335, 9-337, 9-338. This represents the base line rule, with subsection (b) an exception. See also Sections 16-18 and 26-27; UCC Article 2A Section 2A-304 and Official Comment.

Subsection (b) recognizes an exception for a buyer in ordinary course of business (BIOCB), based on Article 9 Section 9-320. Cf. Section 16(c). Section 9-320 cuts off security interests created by the seller. Subsection (b) recognizes and incorporates this UCC provision in the context of a certificate of title transaction, and specifies that a buyer of a vehicle can be a BIOCB even if that person does not obtain a certificate of title. See also UCC Sections 2A-304, 2A-305.

The result is to allow the BIOCB 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) even if the secured party holds the certificate of title; but, like Section 9-320, subsection (b) does not allow the BIOCB to take free of a security interest created by a consignor and perfected by certificate of title lien entry, 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 long-standing UCC policy that even a BIOCB only takes free of security interests created by his or her seller, not interests of other or prior parties. But see subsection (c) and Section 16(c) for possible buyer remedies in this situation.

Section 17 is consistent with the UCC and the case law. It also resolves a related issue: Can a buyer of a vehicle from a dealer be a BIOCB without execution of the certificate of title? The UCC definition of BIOCB is not specific on this, but is broad enough to accommodate this as a common dealer practice. The cases are split. However, this is a common dealer practice, and subsections (b) and (c) protect a consumer buying from a dealer despite the lack of a certificate of title. Rights as between the dealer and its secured party, such as the priorities of claims to the sales proceeds, are left to other law. See, e.g., UCC Article 9 Sections 9-102(a)(64), 9-315, 9-322.

SECTION 18. EFFECT OF INCORRECT INFORMATION OR OMISSIONS.

(a) Except as otherwise provided in this section, a certificate of title, application for a certificate of title, certificate of origin, security interest entry form, or other record otherwise satisfying the requirements of this [act] is effective, even if it contains incorrect information or
required information is omitted.

(b) In addition to the rights provided under Section 16(a) and (b), if a certificate of title, application for a certificate of title, certificate of origin, security interest entry form, or other record is seriously misleading because it contains incorrect information or omits required information, a purchaser of the vehicle covered by the record takes free of any claim or interest the validity of which is dependent on the incorrect information or omitted information, 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), a description of the vehicle covered by a certificate of title, application for a certificate of title, certificate of origin, security interest entry form, or other record otherwise satisfying the requirements of this [act] is sufficient, whether or not the description and vehicle identification number are specific and accurate, if the information, including the vehicle identification number, 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, if a search of the files of the office using correct required information, and using the office’s standard search logic, if any, discovers the file that discloses the security interest or other interest, a failure to provide the information specifically or accurately is not seriously misleading.
Preliminary Comments

Often a certificate of title, application for a certificate of title, certificate of origin, security interest entry form, 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 certificate of title is provided to the purchase or secured party by the owner, the correct or sufficient information is easily ascertainable, and the error causes no injury. Section 18 makes clear that a certificate of title containing erroneous information, or omitting information, is not rendered invalid by the erroneous information or omission, and is valid and effective, except to the extent that a purchaser is misled by the erroneous information or omission. This section is modeled on Article 9 Sections 9-108, 9-337, 9-338, 9-502, and 9-506. The purpose is to prevent harmless errors from invalidating a transaction, e.g., recognizing that errors in the parties’ names or an error in the description of the vehicle often will not mislead parties to a certificate of title transaction. This issue is different than under Article 9, where an error in the debtor’s name can mislead filing searches. Thus, no equivalent to 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).

Subsection (b) provides a sanction, short of invalidation, where a seriously misleading error causes damage to a reliance party. See subsection (d) for a procedure to determine if an error involving a security interest is seriously misleading. It is not misleading for a secured party or lessor to be indicated as the owner on the certificate of title. See Section 27(b).

Subsection (c) provides general rules governing errors or omissions in records pertaining to certificates of title, modeled on Article 9 Section 9-506(a) and (b). Except as provided at subsection (d), an error in the name of the owner or secured party, or the description of the vehicle, is unlikely to prejudice third parties in a certificate of title transaction.

An error in the vehicle identification number (VIN) will not be seriously misleading in many cases, e.g., where a security interest entry form is submitted to the office along with a written certificate of title covering the vehicle. The correct VIN will be apparent on the certificate of title and a minor VIN error on the security interest entry form should not prevent the security interest from being noted on the certificate of title or in the files of the office. Similarly, an error in typing the VIN on a written certificate of title will normally be minor and harmless, and will not impair the effectiveness of the certificate of title or its execution. The same is true for errors in the names of the parties to a transaction. These are examples of harmless errors under subsections (a), (b), and (c).

The exception is described at subsection (d). The exception at subsection (d) is necessary where the search depends on the files of the office, because in this context an error in the name of the owner or VIN could result in a record being mis-filed or not discovered in a proper search of the files of the office, depending on the search logic and indexing system being used.
SECTION 19. DELIVERY OF CERTIFICATE OF TITLE.

(a) Upon creation of a certificate of title, the office shall promptly deliver any written certificate of title, or a record evidencing an electronic certificate of title, to the secured party of record, if any, at the address shown on the security interest entry form submitted by the secured party of record, and, unless that information has been previously provided to the owner, shall deliver a record evidencing the certificate of title to the owner of record at the address of the owner indicated in the files of the office. If there is no secured party of record, the certificate of title or record evidencing the electronic certificate of title must be delivered to the owner of record. The secured party of record, if any, may elect to have the office create a written certificate of title pursuant to subsection (b). The owner of record also may make such an election, but only if all security interests indicated in the files of the office have been terminated.

(b) Within [15] business days after receipt of a request for a written certificate of title pursuant to subsection (a), the office shall create and deliver the requested written certificate of title to the secured party of record, or, if no security interest is indicated in the files of the office, shall create and deliver the requested written certificate of title to the owner of record.

(c) If a written certificate of title is created, any existing electronic certificate of title covering the vehicle is cancelled and replaced by the written certificate of title, and the cancellation must be noted in the files of the office with an indication of the time and date of the cancellation.

Preliminary Comments

Derived from UMVCT Section 10. Note that Section 8 (Application for a Certificate of Title) provides for optional use of an e-mail address.
The determination by the office of the first secured party indicated on the certificate of title, as required under this section, is an administrative determination for purposes of this section and is not dispositive of priority issues governed by UCC Article 9.

This section does not require creation of a written certificate of title, except at the request of the first secured party or, in some circumstances, the owner; if a written certificate of title is created it must be delivered to the first secured party, 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” may be useful for anti-fraud purposes, it also may create delays for subsequent purchasers or creditors 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 rationale in the *Fink* case, such delays may be legally fatal. See Section 28. Therefore this section allows the owner to request issuance of a written certificate of title to facilitate subsequent transactions, though the bracketed language would significantly limit this. This section also should be paired with a means to allow subsequent parties to search for and file security interest entry forms without otherwise having access to the certificate of title. See Sections 4, and 26-27.

**SECTION 20. TRANSFER OF OWNERSHIP BY SECURED PARTY TRANSFER STATEMENT.**

(a) In this section, “secured party 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 or other purchaser has acquired 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 8(a); 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 transfer statement.

(b) Compliance by the secured party of record with the facts [requirements] stated in subsection (a), and payment of any applicable fees and taxes, 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. If a secured party transfer statement is delivered to the office in accordance with subsection (a) with any applicable fee and taxes, unless the secured party transfer statement is rejected by the office for a reason set forth in Section 9, the office shall:

(1) accept the secured party transfer statement;

(2) promptly send notice to the owner of record, and to all persons indicated in the files of the office as having a security interest, that a secured party transfer statement has been received by the office;

(3) amend its records to reflect the transfer;

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

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

(6) deliver the new certificate of title pursuant to Section 19.

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

Preliminary Comments

This section is based on UCC Article 9 Section 9-619 and largely follows the language of
that section, for purposes of consistency with the UCC. Like 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 Article 9. Thus the requirements for a
disposition of collateral under Article 9 Part 6 are not affected by this section. The 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 UCC
Section 9-619 to the specifics of certificate of title transactions, to help unify the rules of Article
9 and this [act].

This section is not mandatory. 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 14, supplemented by the remedial provisions of Section 24.

SECTION 21. TRANSFER OF OWNERSHIP BY OPERATION OF LAW.

(a) Except as provided in subsection (c), in this section:

(1) “By operation of law” means a law or judicial order affecting ownership of a
vehicle on account of death, divorce, merger, consolidation, dissolution, or bankruptcy, or
through the exercise of the rights of a lien creditor or a person with a common law or statutory
lien or other nonconsensual lien, or through other legal process.

(2) “Transfer-by-law statement” means a record signed by a transferee:

(A) stating that, by operation of law, the transferee has acquired or has the right to
acquire the interest of the owner of record;
(B) stating the name and mailing address of the owner of record and the
transferee and any other information required by Section 8(a);

(C) including documentation sufficient to establish the transferee’s interest or
right to acquire the interest of the owner of record; and

(D) stating that the certificate of title is an electronic certificate of title, or that the
transferee does not have possession of the written certificate of title created in the name of the
owner of record, or that the transferee is delivering the written certificate of title to the office
with the transfer-by-law statement.

(b) Compliance by the transferee with the facts [requirements] stated in subsection (a),
and payment of any applicable fees and taxes, entitles the transferee to creation of a certificate of
title showing the transferee as the owner of record. If a transfer-by-law statement is delivered to
the office in accordance with subsection (a) with any applicable fee and taxes, and
documentation satisfactory to the office as to the transferee’s ownership interest or right to
acquire the interest of the owner of record, unless the transfer-by-law statement is rejected by the
office for a reason set forth in Section 9, the office shall:

(1) accept 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 a security interest in the vehicle, that a transfer-by-law statement has
been received by the office;

(3) amend its records to reflect the transfer;

(4) cancel the certificate of title created in the name of the owner of record listed in
the transfer-by-law statement, whether or not the certificate of title 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 pursuant to Section 19.

(c) This section does not apply to the exercise of post-default remedies by a secured party having a security interest in a vehicle, or relieve any party of the obligation to comply with law other than this [act].

Preliminary Comments

This section, like Section 20, is patterned on UCC Article 9 Section 9-619, though this section has a different purpose and therefore diverges more 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 20, this section makes clear that it is not a substitute for a UCC Article 9 disposition of collateral. The post-default remedies of a secured party are governed by Section 20 and [Uniform Commercial Code Article 9].

SECTION 22. CERTIFICATE OF TITLE MUST REFLECT FILES.

The office shall ensure that any certificate of title created pursuant to an application for a certificate of title reflects the information required under Section 10, as contained in the files of the office. If an examination of the files indicates a security interest, the name and status of the secured party of record must be indicated on the certificate of title. If there are additional secured parties, that must be indicated on the certificate of title.

Preliminary Comments

This is derived from UMVCT Section 7. See also UCOTA Sections 10(a), 23. The application for a certificate of title is governed by Sections 8 and 9. A certificate of title must be delivered pursuant to Section 19. Under this section, a certificate of title created under this act qualifies as a certificate of title under UCC Article 9, Section 9-102(a)(10).
SECTION 23. MAINTENANCE OF FILES.

(a) For each record filed in the office, the office shall:

(1) ascertain the vehicle identification number applicable to the record;

(2) create or maintain a file that bears the vehicle identification number assigned to
the filed record and contains the information in the filed record, including the date
and time the filed record was delivered to the office;

(3) maintain the filed record for public inspection, subject to subsection (d); and

(4) index each filed record so as to be accessible by the vehicle identification number
for the vehicle and any other indexing methods as provided by the office.

(b) The office shall maintain files of the information contained in all certificates of title
created under this [act]. The information must be accessible by the vehicle identification number
for the vehicle and any other indexing methods as provided by the office.

(c) Each file maintained under this section must include all security interests, title brands,
and stolen-property reports applicable to the vehicle, and the name and address of any known
secured parties or claimants to ownership.

(d) [The information required in this section, except as provided by law other than this
[act], is a public record accessible pursuant to this [act]]. [Cite to public records law.]

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

[Cross-reference other laws.]

Derived from UMVCT Section 8 and UCC Article 9 Section 9-519. Companion to UCOTA Section 22. This also is a counterpart to Article 9 Section 9-519(a).

The office is required to accept each application for a certificate of title that is submitted in accordance with Sections 8 and 9 and, if the files of that office indicate that all security interests have been terminated, to create a written or electronic certificate of title, at the option of the owner or secured party, in accordance with this [act]. See Sections 8-10, 15 and 19.

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 22 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 24. APPLICATION FOR TRANSFER OF OWNERSHIP OR TERMINATION OF SECURITY INTEREST ENTRY FORM WITHOUT CERTIFICATE OF TITLE OR CERTIFICATE OF ORIGIN.

(a) The office shall create a certificate of title upon receiving an application under Section 8 that is not accompanied by submission of an executed certificate of title or certificate of origin, only if:

(1) all other requirements of an application under Sections 8 and 9 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 a security interest entry form;

(3) at least 45 days before the office creates the certificate of title, notice of the application has been sent to all persons having an interest in the vehicle as indicated in the files of the office, and no objection has been received by the office; and
(4) the applicant presents other documentation required by the office to evidence the applicant’s ownership, or termination of the security interest entry form, and there is no credible information available to the office indicating theft, fraud, or any undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vehicle.

(b) The office may require an applicant under subsection (a) to post a bond or provide an equivalent source of indemnity or security, in a form prescribed by the office, providing for indemnity of any owner, purchaser, secured party, or other claimant, for any expense, loss, delay, or damage, including reasonable attorney’s fees but not consequential damages, resulting from creation of a certificate of title or termination of a security interest entry form under subsection (a). The bond or other source of indemnity may not exceed twice the value of the vehicle as determined by the office.

(c) The office shall release a bond, indemnity, or other security required under subsection (b) if the office has not received a claim within one year after creation of the certificate of title under subsection (a).

(d) In lieu of the requirements of subsection (b), the office may include in the certificate of title created under subsection (a) a notation [legend] [indication] indicating that the certificate of title was created without submission of an executed 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 received by the office within one year after creation of the certificate of title, upon a request in a form and manner specified by the office, the office shall remove the notation [legend] [indication] from the certificate of title.
Preliminary Comments

Derived from UMVCT Section 11. See also Section 16, and Sections 20, 21, and 25.
Section 24 may be used, e.g., to request a certificate of title to effectuate a sale, gift, auction or
judicial sale, UCC 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 24 can also
be used in lieu of a termination statement under Section 28, e.g., if a secured debt has been
satisfied and the secured party is unable or unwilling to provide a termination statement. Section
24 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 a legend on the certificate of title, as
additional potential safeguards to supplement the procedures at Sections 8 and 9.

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 governed by Section 25. Section 25 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 24 provides for a transfer of title where the applicant presents
evidence that he or she is entitled to such a transfer, satisfactory to the office, and the transferor is
unable or unwilling to deliver 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 14, 20, 21, and 25.

SECTION 25. REPLACEMENT CERTIFICATES 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 make application for and obtain a
replacement certificate of title in the name of the owner of record by furnishing information
satisfactory to the office in accordance with this section.

(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 8.

(c) If the existing written certificate of title has been mutilated or is illegible, the existing

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A certificate of title must be submitted to the office with the application for a replacement certificate of title. If the certificate of title has been lost, stolen, destroyed, or is otherwise unavailable, the applicant is not required to include the certificate of title.

(d) Each replacement certificate of title created by the office must comply with Section 10 and conspicuously state that it is a replacement certificate of title.

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

Preliminary Comments

Derived from UMVCT Section 13. A purchaser to whom a replacement certificate of title is executed can qualify as a good faith purchaser (GFP) or BIOCB, e.g., under Section 14, 16 or 17, UCC Article 2 Section 2-403, and Article 9 Sections 9-320, 9-337, and 9-338, if all other requirements are met. The legend required by subsection (c) does not give notice sufficient to bar GFP or BIOCB status.

SECTION 26. RECEIPT OF SECURITY INTEREST ENTRY FORM.

(a) Except as otherwise provided in this section, a security interest entry form is effective upon receipt by the office of a record sufficient under this section and tender of the applicable fee. A security interest entry form effective under this section is an application for a certificate of title for purposes of Section 4 and [Uniform Commercial Code Article 9].

(b) A security interest entry form is sufficient if it is a record that includes the name of a debtor, the name of a secured party or a representative of a secured party, and a description of the vehicle, and one of the following conditions is met:

(1) the debtor has signed a security agreement that provides a description of the vehicle; or
(2) the vehicle is in the possession of the secured party under [Uniform Commercial
Code Section 9-313] pursuant to the debtor’s agreement.

(c) A security interest entry form is not received if the office rejects the form, under
subsection (e), because:

(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;

(3) the record omits the name and mailing address of a debtor and a secured party; or

(4) the record does not contain the correct vehicle identification number.

(d) The office shall maintain a public record showing the date [and time] of receipt of
each security interest entry form that is effective and make the record available on request.

(e) If the office rejects a security interest entry form, the office shall notify the person that
delivered the form of the rejection, the reasons for the rejection, and the date [and time] the form
would have been received had the office not rejected it. The office shall send the notice not later
than midnight of the second business day after the business day on which the office received
delivery of the form. If the office does not send proper notice of rejection of a security interest
entry form by midnight of the second business day after the business day on which the form was
delivered to the office, the security interest entry form is received and effective as of the business
day on which the form was delivered to the office.

Preliminary Comments

This section is modeled on UCC Section 9-516. It addresses many of the same issues as
Section 9-516, e.g., by specifying that a security interest entry form is effective on receipt by the
appropriate office and payment of the required fee, unless it is properly rejected for specified
reasons and within a specified time. Thus, perfection of the security interest occurs upon receipt
the security interest entry form, even if the security interest is never indicated in the files of the
office or on a written certificate of title, assuming there has been attachment under UCC Article 9.

Errors and omissions in the security interest entry form or certificate of title are governed by Section 18. The analysis may be different than under Article 9. For example, under this [act] an error in the secured party’s or debtor’s name or the description of the vehicle often will be a harmless error, because it will not affect a search of the files under the vehicle identification number (VIN) or a transferee of a written certificate of title. Even an error in the VIN may be harmless under Section 18. Therefore subsection (b) does not require precision with respect to the debtor’s or the secured party’s name, or the description of the collateral, for receipt of the security interest entry form to be effective. The effect of any errors will be determined under Section 18. In contrast, 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 form due to an erroneous VIN under subsection (c), the form may be effective for some purposes if the rejection is not timely under subsection (e). In that case the effect of the erroneous VIN will be determined under Section 18. Thus Section 26 determines the effectiveness of a security interest for purposes of perfection, while Section 18 determines the effect of any erroneous information in that form.

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

Consistent Article 9 Section 9-311(a), this [act] displaces Article 9 only with respect to the Article 9 provisions requiring the filing of a financing statement to perfect a security interest, and the rules governing the effectiveness of a security interest entry form. Other 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 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 or to supplement the provisions of this [act]. For example, see 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).

Subsection (e) provides a procedure to require the office to notify a secured party if a security interest entry form is rejected. The time limit for this notice reflects a balancing of the need for secured parties to receive prompt notice of the need to take remedial action, with the need of the office for sufficient time to process incoming forms. If timely and proper notice is not sent under this subsection, the security interest entry form is effective according to its terms even though it may not have met the requirements of this [act] and was not recorded or indexed in the files of the office. In this circumstance, if the other requirements of Article 9 are met, the security interest will be perfected by the security interest entry form. Of course, if the security interest entry form is significantly defective on its face, e.g., no debtor’s name or a completely erroneous description of collateral, the error will render it ineffective despite this provision. See Section 18.
Priorities between the secured party and those who may be prejudiced by the failure of the office to file and index the lien entry form, or to indicate it on the certificate of title, are covered by other sections, e.g., Sections 16-18.

SECTION 27. PERFECION OF SECURITY INTERESTS.

(a) Except as otherwise provided in this [act], if a security interest entry form is effective under Section 26, the security interest represented by the security interest entry form is perfected, upon the later to occur of receipt of the security interest entry form or attachment of the security interest pursuant to [Uniform Commercial Code Section 9-203]. Except as otherwise provided in subsections (e) and (f), a security interest in a vehicle may be perfected only by [receipt of] a security interest entry form [that is effective] under Section 26.

(b) The office may create a certificate of title naming as owner a lessor, consignor or other bailor, or secured party. If the interest of a person named as owner is a security interest, the certificate of title naming such a person as owner perfects the security interest of the lessor, consignor or other bailor, or secured party, but is not of itself a factor in determining whether the interest is a security interest. [The office may treat the person as the owner for administrative purposes.]

(c) The office may reject a security interest entry form only for a reason set forth in Section 26(c) and in the manner set forth in Section 26(e). Rejection for any other reason or in any other manner constitutes receipt of the security interest entry form as of the business day on which the form was delivered to the office[, and the security interest form is effective under Section 26(a) and for purposes of perfection of an attached security interest under subsection (a).] A security interest entry form that does not meet the requirements of Section 26(a) is
received as of the business day on which the form was delivered to the office, and is effective
under Section 26(a) and constitutes perfection under subsection (a), unless it is properly rejected
pursuant to Section 26(e). The failure of the office to index a security interest entry form
correctly or to indicate the security interest on the certificate of title does not affect the receipt or
effectiveness of the security interest entry form.

(d) A secured party may [assign or otherwise] transfer its rights as secured party under
this [act]. An otherwise valid transfer of a security interest is effective whether or not it is
reflected in the files of the office or indicated on the certificate of title. The [assignment or]
transfer vests in the transferee any rights of the secured party under this [act] [and the [Uniform
Commercial Code]] including, as applicable, perfection of the security interest as against
transferees from the vehicle’s owner. [Perfection remains effective even if the transfer [and
transferee] of the security interest are not indicated in the files of the office or on the certificate of
title.] However, a purchaser of the vehicle that obtains a release from a secured party indicated
in the files of the office or on the certificate of title takes free of that security interest [and also
free of the rights of an assignee of that security interest if the assignment is not indicated in the
files of the office or on the certificate of title].

(e) During any period in which [collateral subject to this [act]] [a vehicle] is inventory
held for sale or lease by a person in the business of selling or leasing vehicles, or is leased by the
person as lessor, a security interest in the vehicle created by the person is not subject to this
section.

(f) A secured party may perfect a security interest by taking possession of a vehicle only
as provided in [Uniform Commercial Code Section 9-313(b) and 9-316(d)].
Preliminary Comments

Derived from UCC 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 entry form with the office, even if the secured party cannot obtain and surrender the certificate of title. Similarly, perfection does not require notation on a written certificate of title, although that does confer an additional measure of protection. See Sections 14, 16, and 17. Perfection by receipt of a security interest entry form under Sections 26 and 27, without notation on a certificate of title, or even if a certificate of title has not otherwise been created, will create a certificate of title and be sufficient for perfection. See Sections 4, 26, 27. Subsection (a) also makes clear that perfection under this section is the exclusive means of perfecting a security interest in a vehicle, except as provided in subsections (e) and (f), which follow UCC Article 9 Sections 9-311(d) and 9-313(b).

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

Perfection under Sections 26-27, without notation of the security interest on a written certificate of title, would be effective against lien creditors, but not against a competing party who relies on the certificate of title, pursuant to Sections 14-19. For example, a competing purchaser would prevail under Section 16.

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).

Subsection (d) makes clear that retitling is not necessary upon assignment of a security interest. This provision is modeled partly on Article 9 Sections 9-310(c) and 9-338 and makes clear that failure to indicate a transfer of the security interest in the files of the office or on the certificate of title does not affect the perfection or enforcement of the security interest in favor of the transferee, except that a purchaser of the vehicle or subsequent 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 if the purchaser or subsequent transferee gives value in detrimental reliance on the certificate of title or files of the office. See also Section 18. 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, that debt would be discharged even if the debt and security interest had been assigned to another creditor.
As noted above, subsections (e) and (f) follow UCC Article 9 Sections 9-311(d), 9-313(b), and 9-316(d), to provide consistency with the UCC.

A model lien entry form can be provided, consistent with the model forms in Article 9 Section 9-521.

SECTION 28. TERMINATION STATEMENT.

(a) The secured party indicated in the files of the office shall deliver to the office a termination statement if:

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

(2) the debtor did not authorize the filing of the security interest entry form.

(b) The secured party indicated in the files of the office shall deliver the termination statement to the office:

(1) within [20] days after there is no obligation secured by the vehicle covered by the security interest entry form and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within [10] days after the secured party receives a signed demand from a debtor and there is no secured by the vehicle and no commitment to make an advance, incur an obligation, or otherwise give value.

(c) If a written certificate of title has been created and delivered to the secured party, the secured party shall deliver the written certificate of title to the office with the termination statement, within the time limits provided in subsection (b). If the written certificate of title has been lost, stolen, mutilated, or destroyed, or is otherwise unavailable or illegible, the secured party

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party shall deliver with the termination statement, within the time limits provided in subsection 
(b), an application for a replacement certificate of title meeting the requirements of Section 25.

(d) Upon the delivery of a termination statement to the office pursuant to this section the 
security interest entry form and any notation of the security interest on the certificate of title to 
which the termination statement relates ceases to be effective.

(e) Only the secured party whose interest is required to be terminated, or a person 
authorized by that secured party, is under a duty to and may file a termination statement under 
this [act].

(f) If it is established that a secured party has failed to comply with this section, the 
secured party is liable for damages in the amount of any loss caused by the failure to comply, 
including, as appropriate, the reasonable cost of an application for a certificate of title under 
Sections 8 and 24.

(g) Upon termination of a security interest entry form under this section, the office shall 
adjust its files to show termination of the security interest, and that any subsequent secured party 
is the secured party of record. If a written certificate of title has been created indicating that the 
security interest has been terminated, the office shall cancel that certificate of title, create a new 
certificate of title under Sections 10 and 11, and deliver the new certificate of title in accordance 
with Section 19.

Preliminary Comments

“Termination statement” is defined at Section 3(a)(31). The Uniform Security Interest Entry 
Form at Section 29 includes a Termination statement.
## Preliminary Comments

“Security interest entry form” is defined at Section 3(a)(27). Effectiveness of a security interest entry form is determined under Section 26. A security interest entry form that is effective under Section 26 may constitute perfection of the security interest under Section 27. Proper use of this form means that the security interest entry form is sufficient under Section 26(b) upon attachment of the security interest, and therefore is effective under Section 26(a) if received by the office under Section 26(c)-(e).

This form can also be used as a termination statement. “Termination statement” is defined at Section 3(a)(31), and is otherwise governed by Section 28.

## SECTION 30. DUTIES AND OPERATION OF FILING OFFICE.

(a) The office shall maintain a file of the information provided in a security interest entry
form received by the office under Section 26, for at least one year after termination of the security
interest entry form under Section 28. The information must be accessible by the vehicle
identification number for the vehicle and any other indexing methods as provided by the office.

(b) If a person that files a record with the office, or submits information that is accepted
by the office, requests an acknowledgment of the filing or submission, the office shall send to the
person an image or acknowledgment showing the vehicle identification number, 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 a 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 there is on file on a date and time specified by the office, but not a date
earlier than three business days before the office receives the request, any
certificate of title and security interest entry form that:

(A) covers a vehicle identified by a vehicle identification number designated in
the request; and

(B) has not been cancelled or terminated;

(2) the effective date of the security interest entry form; and

(3) the name of the owner of record, and all security interest entry forms indicated in
the files of the office that are not subject to a termination statement under Section
28.

(d) In responding to a request under this section, the office may communicate the
information in any medium. However, if requested, the office shall send the requested
information in a record that can be admitted into evidence in the courts of this state without
extrinsic evidence of its authenticity.

(e) The office shall perform the acts required under this section at the time and in the
manner prescribed by the rules of the office, but not later than two business days after the office
receives the request.

Preliminary Comments

Section 30 is derived from UCC Article 9 Sections 522-523.

[SECTION 31. TITLE BRAND.]

Preliminary Comments

[Left blank to allow a state to insert its title brand statute. See also definition of “title brand”
in Section 3, and Sections 8, 9, and 10.]

SECTION 32. 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 33. SEVERABILITY CLAUSE. If any provision of this [act] or its application
to any person or circumstance is held invalid, the invalidity does not affect other provisions or
applications of this [act] which can be given effect without the invalid provision or application,
and to this end the provisions of this [act] are severable.
SECTION 34. EFFECTIVE DATE. This [act] takes effect . . . .

SECTION 35. REPEALS. The following acts and parts of acts are repealed:

SECTION 36. SAVINGS CLAUSE.

(a) Except as otherwise provided in this section, this [act] applies to any transaction, certificate of title, record, or information within its scope, even if the transaction, certificate of title, record, or information was entered into or created before this [act] takes effect.

(b) Except as otherwise provided in this section:

(1) transactions, certificates of title, records, and information that were validly entered into or created before this [act] takes effect, and would be subject to this [act] if they had been entered into or created after this [act] takes effect, and the rights, duties, and interests flowing from these transactions, certificates of title, records, and information, remain valid after this [act] takes effect; and

(2) the transactions, certificates of title, records, and information may be terminated, completed, consummated, and enforced as required or permitted by this [act] or by the law that otherwise would apply if this [act] had not taken effect.

(c) This [act] does not affect an action, case, or proceeding commenced before this [act] takes effect.

SECTION 37. TRANSITION CLAUSE.

(a) A security interest that is enforceable immediately before this [act] takes effect 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] if, when this [act] takes effect, the applicable
requirements for enforceability and perfection under this [act] are satisfied without further action.

   (b) If, immediately before this [act] takes effect, a security interest is enforceable and
would have priority over the rights of a person that becomes a lien creditor at that time, but the
applicable requirements for enforceability or perfection under this [act] are not satisfied when
this [act] takes effect, the security interest:

   (1) is a perfected security interest for one year after this [act] takes effect;

   (2) remains enforceable thereafter only if the security interest becomes enforceable
       under this [act] before the year expires; and

   (3) remains perfected thereafter only if the applicable requirements for perfection
       under this [act] are satisfied before the year expires.

**Preliminary Comment**

Sections 36 and 37 are derived from UCC Article 9 Sections 9-702 and 9-703.