UNIFORM CERTIFICATE OF TITLE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWELFTH YEAR
WASHINGTON, DC
AUGUST 1 - 7, 2003

UNIFORM CERTIFICATE OF TITLE ACT

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

Copyright © 2003
by
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

The ideas, concepts and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been reviewed, debated or approved by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not reflect the views of the Conference and its Commissioners or the Drafting Committee and its Members and Report. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal made by the National Conference of Commissioners on Uniform State Laws.
DRAFTING COMMITTEE ON UNIFORM CERTIFICATE OF TITLE ACT

LEON M. MCCORKLE, JR., P.O. 256, 4288 W. Dublin-Granville Rd., Dublin, OH 43017-0387, Chair
MICHAEL A. FERRY, 4232 Forest Park Ave., Suite 1800, St. Louis, MO 63108
DIANE FORD, 630 S. Farmingdale Rd., New Berlin, IL 62670
H. LANE KNEEDLER, 901 E. Byrd Street, Suite 1700, Richmond, VA 23219
ESSON MCKENZIE MILLER, JR., Virginia Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219
EDWIN E. SMITH, 150 Federal St., 21st Floor, Boston, MA 02110-1726
DALE G. HIGER, 101 S. Capitol Blvd., Suite 1900, Boise, ID 83702-5958, Enactment Plan Coordinator
EARL F. LEITESS, 25 Hooks Lane #302, Baltimore, MD 21208
ALVIN C. HARRELL Oklahoma City University School of Law, 2501 N. Blackwelder, Oklahoma City, OK 73106, Reporter

EX OFFICIO
K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910, President
JACK DAVIES, 687 Woodridge Dr., Mendota Heights, MN 55118, Division Chair

AMERICAN BAR ASSOCIATION ADVISORS
WILLIAM H. TOWLE, P.O. Box 3267, Missoula, MT 59806-3267, American Bar Association Advisor

EXECUTIVE DIRECTOR
WILLIAM H. HENNING, University of Missouri–Columbia, School of Law, 313 Hulston Hall, Columbia, MO 65211, Executive Director
FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Norman, OK 73019, Executive Director Emeritus
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, Executive Director Emeritus

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org
UNIFORM CERTIFICATE OF TITLE ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE .......................................................... 6
SECTION 2. DEFINITIONS ............................................................ 6
SECTION 3. LAW GOVERNING VEHICLES COVERED BY CERTIFICATE OF TITLE OR
            CERTIFICATE OF ORIGIN .............................................. 15
SECTION 4. EXCLUSIONS ............................................................. 18
SECTION 5. VEHICLE IDENTIFICATION NUMBER .................................. 18
SECTION 6. CERTIFICATE OF ORIGIN ................................................ 18
SECTION 7. INCOMPLETE VEHICLES ............................................... 19
SECTION 8. APPLICATION FOR CERTIFICATE OF TITLE ............................ 20
SECTION 9. CREATION OF OR REFUSAL TO CREATE CERTIFICATE OF TITLE .... 21
SECTION 10. CONTENTS OF CERTIFICATE OF TITLE ............................... 23
SECTION 11. CERTIFICATE OF TITLE NOT SUBJECT TO JUDICIAL PROCESS ....... 25
SECTION 12. ODOMETER DISCLOSURE ............................................... 26
SECTION 13. REGISTRATION .......................................................... 27
SECTION 14. VOLUNTARY TRANSFER OF OWNERSHIP ............................ 29
SECTION 15. NOTICE TO OFFICE ................................................... 30
SECTION 16. ADVERSE CLAIMS ...................................................... 31
SECTION 17. TRANSFEE OF VEHICLE COVERED BY CERTIFICATE OF TITLE .... 34
SECTION 18. EFFECT OF ERRORS OR OMISSIONS ................................. 35
SECTION 19. DELIVERY OF CERTIFICATE OF TITLE ............................... 38
SECTION 20. TRANSFER OF LEGAL TITLE TO SECURED PARTY .................. 39
SECTION 21. TRANSFER OF TITLE BY OPERATION OF LAW ........................ 41
SECTION 22. CERTIFICATE OF TITLE MUST REFLECT FILES ..................... 43
SECTION 23. MAINTENANCE OF FILES ............................................. 43
SECTION 24. APPLICATION FOR TRANSFER WITHOUT CERTIFICATE OF TITLE .... 44
SECTION 25. REPLACEMENT CERTIFICATES OF TITLE ............................ 46
SECTION 26. RECEIPT OF SECURITY INTEREST ENTRY FORM .................... 47
SECTION 27. PERFECTION OF SECURITY INTERESTS .............................. 49
SECTION 28. EFFECTIVE DATE OF SECURITY INTEREST ENTRY .................. 52
SECTION 29. UNIFORM SECURITY INTEREST ENTRY FORM ....................... 53
SECTION 30. DUTIES AND OPERATION OF FILING OFFICE ........................ 53
SECTION 31. TITLE BRAND .......................................................... 53
SECTION 32. UNIFORMITY OF APPLICATION AND CONSTRUCTION ................. 54
SECTION 33. SEVERABILITY CLAUSE ............................................... 54
SECTION 34. EFFECTIVE DATE ...................................................... 54
SECTION 35. REPEALS ............................................................... 54
SECTION 36. SAVINGS CLAUSE ...................................................... 54
SECTION 37. TRANSITION CLAUSE .................................................. 54
UNIFORM 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, financers, 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, financers, 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 financers 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.
UNIFORM CERTIFICATE OF TITLE ACT

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

SECTION 2. DEFINITIONS.

(a) In this [act]:

(1) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under [Uniform Commercial Code Article 2] may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(2) “Cancel” as applied to a certificate of title or a certificate of origin means the certificate no longer has validity, existence, or legal effect.

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

(4) “Certificate of title” means a record, created or authorized by the office, or, when this [act] so indicates, by an agency of another jurisdiction:

(A) which is:

(i) evidence of ownership of a vehicle; or

(ii) an indication of perfection of a security interest in the vehicle covered by the record; and

(B) with respect to which this [act] and [Uniform Commercial Code Article 9] provide that a perfected security interest [noted on the certificate] has priority over the rights of a lien creditor with respect to the vehicle.

(5) “Create,” with respect to a certificate of title, means to [establish] [bring into being] a certificate of title by

(A) receipt of a security interest entry form by the office;

(B) making a record constituting an electronic certificate of title part of the files of the office; or

(C) or issuing a written certificate of title pursuant to this [act].

(6) “Deliver” means a voluntary transfer of possession of a record or its transmission by any usual means, properly addressed to the recipient and with the cost of delivery provided for.
(7) “Electronic certificate of origin” means a certificate of origin created as a record or records consisting of information stored only in an electronic medium and retrievable in perceivable form.

(8) “Electronic certificate of title” means a certificate of title created as a record or records consisting of information stored only in an electronic medium and retrievable in perceivable form.

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

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

(11) “Lessee in ordinary course of business” means a person other than a pawnbroker who in good faith and without knowledge that the lease to it is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(12) “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.

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

(14) “Office” means [insert name of relevant agency in enacting state].

(15) “Owner” means a person having an ownership interest in a vehicle, or an agent, nominee, or other representative acting or entitled to act for that person.

(16) “Ownership” means legal title, as determined pursuant to this [act] and law other than this [act]. It does not include beneficial ownership.

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

(18) “Purchase” means to take by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

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

(20) “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.

(21) “Security interest” means an interest that secures payment or performance of an obligation, as provided in [Uniform Commercial Code Sections 1-201(b) and 1-203].

(22) “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 holds an agricultural lien;

(C) a consignor;

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

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

(F) a person that holds a security interest arising under [Uniform Commercial Code Section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118].

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

(A) to execute or adopt a tangible symbol; or

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

(24) “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.

(25) “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.

(26) “Transfer” means to convey an interest in personal property or fixtures by sale or otherwise.

(27) “Transferee” means a person who takes by transfer.
“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 motorized device designed for use by an individual having a physical impairment; or

(E) special mobile equipment designed primarily for off-road use and whose use of roadways is only incidental.

“Written certificate of origin” means a certificate of origin created and maintained in paper form.

“Written certificate of title” means a certificate of title created and maintained in paper form.

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

“Agreement” UCC Section 1-201(b)(3).

“Authenticate” UCC Section 9-102(a)(7).

“Buyer” UCC Section 2-103(1)(a).

“Collateral” UCC Section 9-102(a)(12).

“Communicate” UCC Section 9-102(a)(18).

“Debtor” UCC Section 9-102(a)(28).

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

“Electronic” UCC Section 2-103(1)(F).
Preliminary Comments

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

Section 2(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 2(a)(4) 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 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 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 3 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 2(a)(3), and triggers application of this [act] pursuant to Section 3, 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 2(a)(5) 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 (2)(a)(8) and (30); Section 9 (obligation of the office to create a certificate of title). As noted a certificate of title can be created by receipt in the office of a security interest entry form. See Sections 3, 26, 27, and 28. 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 2(a)(8), “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 2(a)(30).

The definition of “execute” at Section 2(a)(9) 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 2(a)(23).

The definition of “lien creditor” at Section 2(a)(12) 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 2(a)(12)(A) is illustrative, not exclusive. Other examples include a garnishor or judgment lien creditor.

The definition of “person” at Section 2(a)(17) 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 2(a)(18) 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 2(a)(19) is identical to UCC Article 1 Section 1-201(b)(30) (2002 uniform text), for purposes of consistency with the UCC.

Section 2(a)(21) references and incorporates revised UCC Sections 1-201(b) and 1-203 (2002 uniform text). If a state has not enacted revised Article 1, the citation should be Section 1-201(37) of old Article 1 (as enacted in that state).

The terms “Transfer” and “Transferee” at Section 2(a)(26) and (27) 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
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 3, 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 3 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 2(a)(22) is identical to UCC Article 9 Section 9-102(a)(72). Some parts of this definition may not be applicable to vehicles, e.g., Section 2(a)(22)(F), but are included for purposes of consistency with the UCC.

The definition of “sign” at Section 2(a)(23) 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 2(8). It is intended to encompass both electronic and written signatures. As used in Section 2(a)(23), 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 2(a)(9) of this [act].

**SECTION 3. LAW GOVERNING VEHICLES COVERED BY CERTIFICATE OF TITLE OR CERTIFICATE OF ORIGIN.**

(a) The local law of the jurisdiction under whose certificate of title a vehicle is covered governs all issues relating to or derived from the certificate of title and all other issues governed by this [act], 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.
(b) A vehicle is covered by a certificate of title when an application for a certificate of title or a security interest entry form and the applicable fee are received by the office in accordance with this [act]. A security interest entry form is sufficient for this purpose only if the debtor is located in this State, and a certificate of title has not been created in another state. 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 evidenced only by a security interest entry form, created in another jurisdiction.

(c) Except as otherwise provided in this section, if a vehicle is not covered by a certificate of title:

(1) an agreement by parties to a domestic transaction that any or all of their rights and obligations are to be determined by the law of this State or of another state is effective, whether or not the transaction bears a relation to the state designated; and

(2) an agreement by parties to an international transaction that any or all of their rights and obligations are to be determined by the law of this State or of another state or country is effective, whether or not the transaction bears a relation to the state or country designated.

(d) If a vehicle is not covered by a certificate of title, in the absence of an agreement effective under subsection (c), 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.

(e) For the purposes of this section, “certificate of title” means a certificate of title as defined in Section 2(a)(4) except the record may be created or authorized by the government agency of any jurisdiction which is permitted to create or authorize such a record.
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 2(a)(4), 2(a)(5), 2(a)(15), 2(a)(28), 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 2, and the scope and choice of law provisions at Section 3, 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 3 provides a choice of law to establish the applicability of Sections 8, 9, 26, 27, and 28.

Subsections (c) and (d) 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 to trigger sections (a) and (b). Thus, e.g., subsections (c) and (d) provide for general choice of law rules to apply to certificates of origin, which are not created by a state, prior to creation of a certificate of title.

Definitional Cross Reference:


“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 4. 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 2(a)(28).

SECTION 5. VEHICLE IDENTIFICATION NUMBER. A vehicle identification number assigned to a vehicle by any manufacturer or importer of the vehicle pursuant to the law of any State must be recognized and recorded as the vehicle identification number by the office.

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 6. CERTIFICATE OF ORIGIN.

(a) If a certificate of origin is created or required to be created under law other than this act, the manufacturer, importer, or distributor of a vehicle that creates or is authorized to create a certificate of origin for the vehicle, upon transfer of ownership of the vehicle, shall create and deliver or execute the certificate of origin to the transferee or deliver the certificate to the office.
Each succeeding transferor shall execute to the next transferee or sign and deliver to the office all certificates of origin covering the vehicle.

(b) For purposes of obtaining a certificate of title, a purchaser may require that its transferor create and 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 replaced/cancelled.

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 3(c) and (d) for the choice of law rules that determine whether this [act] applies to a certificate of origin.

Definitional Cross Reference:

“Execute.” Section 2(a)(9).

“Purchase.” Section 2(a)(18).

“Transfer.” Section 2(a)(26).

SECTION 7. INCOMPLETE VEHICLES.

(a) In this section, “later stage manufacturer” means a purchaser to which ownership to a vehicle is transferred for further manufacture, including fabrication, assembly, or other completion.

(b) If a manufacturer or importer of a new vehicle transfers ownership of the vehicle to a later stage manufacturer, the manufacturer or importer shall execute to the later stage manufacturer a certificate of origin covering the vehicle.
(c) 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 shall execute all known certificates of origin to the purchaser.

(d) If a dealer, distributor, or other purchaser transfers ownership of a new vehicle after manufacture by a later stage manufacturer, the transferor shall execute to the next purchaser all known certificates of origin covering the vehicle.

Preliminary Comments

Section 7 accommodates a multiple-step manufacturing and sales process (e.g., transfers between an initial manufacturer and possibly multiple subsequent manufacturers, dealers, etc., plus a sale by a dealer to the end-user).

SECTION 8. APPLICATION FOR CERTIFICATE OF TITLE.

(a) An application for a certificate of title, subject to Section 18, must contain:

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

(2) the vehicle identification number;

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

(4) any known security interest in the vehicle;

(5) any known title brand; and

(6) 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 may contain electronic communication addresses of the transferor and transferee.
(b) Except as otherwise provided in Section 20, an application for a certificate of title must be accompanied by any known, existing certificate of title or certificate of origin from this or any other jurisdiction, or, if there is none, any other known, existing information or record of the vehicle’s certificate of title or certificate of origin, executed to the purchaser or other transferee by the [transferor] [owner as indicated in the files of the office or on the existing certificate of title or origin or other record of ownership]. Information from these sources is part of the application for a certificate of title and shall be indicated in the files of the office.

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

(d) [Provide model form application and safe harbor language]

(e) [AAMVA photo copy procedure.]

Preliminary Comments

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 OR REFUSAL TO CREATE CERTIFICATE OF TITLE.

(a) Upon submission of an application pursuant to Section 8, and payment of all applicable fees and taxes, unless [there is credible [evidence] [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 otherwise fails to comply with law other than this [act], the
office shall create a certificate of title. The certificate of title must show the transferee as vehicle
owner and the existence of any outstanding security interest 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.

(b) A certificate of title may be written or, to the extent the office authorizes and creates
electronic certificates of title, electronic, at the option of the secured party or[, if no security
interest is indicated in the files of the office, at the option of] the owner.

(c) The office may reject an application for a certificate of title only for a failure to meet
the requirements of Section 8. Rejection affects only the interest of the applicant; it does not
affect the rights of other persons or alter the effects of a security interest entry form under
Sections 3, 26, 27 and 28.

(d) 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] and after [30] days’ notice
served [in person or sent by regular mail] [as required for service of process in a civil action] to
the applicant and to all secured parties indicated in the files of the office. The notice shall
provide an opportunity for a hearing at which the applicant may present evidence in support of
the application. Revocation of a certificate of title pursuant to this section does not revoke
perfection of a security interest or the effects of a security interest entry form received pursuant to
this [act]. The effect of a security interest entry form is governed by Section 27.
(e) A certificate of title may be created by receipt of a security interest entry form pursuant to Section 26 even though a certificate of title has not been created pursuant to this section.

**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.

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 Sections 3, 18, 26, and 27, a certificate of title must contain:

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

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

(3) the name and address of the first secured party indicated in the files of the office, showing that status, and an indication of the existence of any additional security interests;
(4) the vehicle identification number of the vehicle;

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

(6) the vehicle mileage at the time of the latest transfer of title; and

(7) all known title brands as required by [this act or] law other than this [act], or as previously indicated on a certificate of title created in this state or another jurisdiction or in an application submitted pursuant to Section 8. The brand 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].”

[(b) If a vehicle was previously registered in a jurisdiction that does not provide for indication of the first security interest in or on a certificate of title as a condition or consequence of perfection, the office shall include a legend indicating that the vehicle may be subject to an undisclosed security interest or that the vehicle was imported from a jurisdiction that does not require indication of a security interest on the certificate of title. If notice of a security interest is not received by the office within [one year] [four months] after creation of the certificate of title, upon application of the owner or a secured party and submission of the certificate of title, the office shall create a certificate of title that does not include the legend.]

[(b)][(c)] A certificate of title must provide for subsequent execution of the certificate by the owner.
Preliminary Comments

“Title brand” is defined in Section 2(a)(25). 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.

Bracketed Subsection (b) of Section 10 does not refer to other states, as all states provide for indication of at least the first security interest on the certificate of title. Subsection (b) would govern vehicles imported from foreign jurisdictions, and would provide a grace period for reperfection in this State for security interests previously perfected by other means in the foreign jurisdiction. It is in brackets because the Drafting Committee has been unable to agree on this approach. There is concern that a required legend indicating the possibility of undisclosed security interests would impair the marketability of used vehicles from Canada. One alternative is to delete bracketed subsection (b). This would leave U.S. purchasers without notice of possible undisclosed security interests, though in many cases such security interests would be cut off in any event under Sections 16 and 17.

SECTION 11. CERTIFICATE OF TITLE NOT SUBJECT TO JUDICIAL PROCESS.

This [act] does not prohibit or preclude a lawful repossession of or levy on a vehicle or attaching and foreclosing a statutory or common law lien on a vehicle, but a certificate of title is not itself subject to garnishment, attachment, levy, or other judicial process against property. A
failure to indicate a statutory or common law lien on a certificate of title covering the vehicle does not invalidate the statutory or common law lien.

**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.

**SECTION 12. ODOMETER DISCLOSURE**

(a) Each certificate of title, at the time it is created or executed, shall contain or be accompanied by a disclosure of the vehicle mileage, and other information as provided by the transferor under 49 C.F.R. Part 580 when ownership of the vehicle was transferred, and a space for any other information required to be disclosed on the certificate of title under law other than this [act].

(b) In connection with the transfer of ownership of a vehicle to a purchaser, the transferor shall disclose the vehicle mileage to the purchaser in an executed record that is part of, attached to, or accompanies the certificate of title or other record used to transfer ownership.

(c) Execution of a record that provides the information required for an odometer mileage disclosure under federal law satisfies the requirements of this section, but this [act] is otherwise subject to [reference 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-lessee 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, 2000), codified at 15 U.S.C. § 7001 et seq. Further clarification is being sought.

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. REGISTRATION

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

(b) A registration under this section must include, to the extent practicable, the
information required in an application for a certificate of title. If the vehicle is subject to a lease, the registration must also include the lessee’s name and address, and the termination date of the lease, and may designate the lessee or the lessor (or both) as the person to receive communications relating to the certificate of title.

(c) As a condition of registering information under this section, [to effectuate the law of this State] the office may require the applicant to provide any other information and documentation [as the office deems appropriate, including at the discretion of the office a bond in the form and amount determined by the office] [and a bond in the form and amount determined by the office]. The bond must provide for indemnification of any secured party or other party against any expense, loss, or damage resulting from the registration of the information.

(d) A registration under this section is not a certificate of title and does not provide a basis for determining or transferring ownership to a vehicle.

[(e) Law other than this [act] requires registration 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 § 11. The requirement for a bond at
subsection (c) is derived from UMVCT § 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 3. 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) If ownership of a vehicle covered by a certificate of title created in any jurisdiction is
transferred to a purchaser, the purchaser may require the transferor to promptly execute the
certificate of title to the purchaser pursuant to this [act] and the person authorized to execute the
certificate of title shall, as promptly as practicable and in compliance with law other than this
[act], execute the certificate of title to the purchaser.

(b) Execution of a certificate of title by the transferor to the purchaser transfers ownership
to the purchaser.

(c) Except as otherwise provided in this [act], a transfer of ownership is not rendered
ineffective by the failure to execute the certificate of title as provided in subsection (a), but 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.

(a) A transferor or transferee of ownership to a vehicle 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 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 does not constitute 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. ADVERSE CLAIMS.

(a) Unless a written certificate of title contains a statement that the vehicle is or may be
subject to adverse claims or security interests not shown on the certificate of title, the purchaser
of a vehicle, other than a person in the business of selling or leasing vehicles, takes free of any
adverse claim to the vehicle or security interest in the vehicle which is not indicated on the
written certificate of title if the purchaser:
(1) gives value and receives possession of the vehicle and valid execution of the
written certificate of title, in good faith and in accordance with reasonable commercial standards
of fair dealing; and

(2) has no notice of the security interest in the vehicle.

(b) If a purchaser to which subsection (a) applies failed to exercise ordinary care, the
person bearing the loss under subsection (a) may recover damages from the purchaser to the
extent the purchaser’s failure to exercise ordinary care contributed to the loss.

(c) A purchaser of goods acquires all ownership 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 a vehicle has been delivered under a transaction
of purchase the purchaser has that power even though:

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

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

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

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

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

(d) In this section “ordinary care” means observance of reasonable commercial standards,
prevailing in the area in which the person is located, with respect to the type of transaction in
question. It does not require an inquiry by a purchaser beyond examination of the written
certificate of title and verification of the transferor’s identity, unless such an examination or
verification would suggest to a reasonable person the need for further inquiry.

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 2(a)(19)) 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. TRANSFEREE OF VEHICLE COVERED BY CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Section 14, 16, 18, 26, or 27, a transferee of a vehicle takes subject to an 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 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 any adverse interest created by the seller or lessor, including a security interest indicated on the certificate of title, even if there is no execution of the certificate of title to that buyer.

(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 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 delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods 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 ERRORS 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 errors or omissions.

(b) Subject to 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 contains when it is created errors or omissions that are seriously, a purchaser of the vehicle takes free of any claim or
interest the validity of which is dependent on the erroneous information or the absence of the
omitted information to the extent that the purchaser gives value in reasonable reliance on the
erroneous 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 is sufficient, whether or not the description and vehicle identification
number are specific and accurate, if the information in the record, 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, does not discover the
file that discloses the security interest or other interest, the failure to provide the information
accurately is seriously misleading.

[(e) If required information in a security interest entry form is seriously misleading,
the form is not effective.]

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.

Bracketed subsection (e) would change this analysis by rendering a seriously misleading security interest entry form wholly invalid, rather than merely ineffective as to a reliance party who was misled.
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 first secured party indicated in the files of the office, if any, at the address shown on the security interest entry form submitted by the first secured party, and, unless that information has been previously provided to the owner, shall deliver a record evidencing the certificate of title to the vehicle owner at the address indicated in the files of the office. If there is no secured party indicated in the files of the office, the certificate of title or record evidencing the electronic certificate of title must be delivered to the owner. A secured party may elect to have the office produce a written certificate of title pursuant to subsection (b). The owner also may make such 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 the office shall produce and deliver the requested written certificate of title to the secured party, or, if no security interest is indicated in the files of the office, shall produce and deliver the requested written certificate of title to the owner.

(c) If a written certificate of title is produced, any existing electronic certificate of title is replaced by the written certificate of title, and the electronic certificate of title is no longer effective as a certificate of title.

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 3, and 26-27.

SECTION 20. TRANSFER OF LEGAL TITLE TO SECURED PARTY.

(a) In this section, “secured party transfer statement” means a record authenticated by a secured party stating:

(1) that the vehicle owner indicated in the files of the office has defaulted on an obligation to the secured party secured by a security interest in the vehicle;

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

(3) that, by reason of the exercise, the secured party or another purchaser has acquired the rights of the vehicle owner indicated in the files of the office;

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

(A) the vehicle owner indicated in the files of the office;

(B) the secured party;
(C) any other purchaser;

(5) any other information required by Section 8(a); and

(6) either that the secured party does not have possession of the certificate of title created in the name of the vehicle owner indicated in the files of the office or the secured party is delivering the certificate of title to the office with the secured party transfer statement.

(b) Compliance by the secured party with subsection (a) entitles the secured party to the creation of a certificate of title showing the secured party or other purchaser as vehicle owner. If a secured party transfer statement is delivered to the office with the applicable fee and, any previously created certificate of title, 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 of the secured party transfer statement to the vehicle owner indicated in the files of the office;

(3) amend its records to reflect the transfer;

(4) cancel the certificate of title created in the name of the person previously indicated in the files of the office as the vehicle owner, whether or not the certificate of title has been delivered to the office;

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

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

(c) The creation of a certificate of title under subsection (b) is not of itself a disposition of the vehicle under [Uniform Commercial Code Article 9] and does not of itself relieve the secured party of the obligations set forth in this section.
party of its duties under that statute, unless creation of the certificate of title otherwise qualifies
as a disposition under that statute.

**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 Section 24.

**SECTION 21. TRANSFER OF TITLE BY OPERATION OF LAW.**

(a) In this section:

(1) “Transfer by operation of law” means a transfer by operation of law of ownership
of a vehicle on account of death, divorce, merger, consolidation, dissolution, or bankruptcy,
through the exercise of the rights of a lien creditor, or other like transfers of ownership.

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

(A) stating that, by operation of law, the transferee has acquired or has the right to
acquire the interest of the vehicle owner indicated in the files of the office;

(B) stating the names and mailing addresses of the vehicle owner indicated in the
files of the office 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 vehicle owner indicated in the files of the office;

(D) stating either that the transferee does not have possession of the certificate of title created in the name of the vehicle owner as indicated in the files of the office or that the transferee is delivering the certificate to title to the office along with the transfer-by-law statement; and

(E) including a record signed by all persons indicated in the files of the office as having a security interest in the vehicle, consenting to the transfer.

(b) Compliance by the transferee with this section entitles the transferee to creation of a certificate of title showing the transferee as vehicle. If a transfer-by-law statement is delivered to the office with the applicable fee, and documentation satisfactory to the office as to the transferee’s interest as or right to acquire the interest of the vehicle owner, 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 of the transfer-by-law statement to all vehicle owners and secured parties indicated in the files of the office;

(3) amend its records to reflect the transfer;

(4) cancel the certificate of title created in the name of the vehicle owner previously indicated in the files of the office whether or not the certificate of title has been delivered to the office;

(5) create a new certificate of title indicating the transferee as vehicle owner; 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.

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.

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 the examination of the files indicates a security interest, the name and security interest status of the first secured party must be indicated on the certificate of title. If there are additional secured parties, there must be an indication to that effect on the certificate of title.

Preliminary Comments

This is derived from UMVCT Section 7. See also 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.

SECTION 23. MAINTENANCE OF FILES.

(a) The office shall maintain files of the information contained in all certificates of title created under this [act]. The information must be accessible by [:

(1)] the vehicle identification number for the vehicle [; and

(2) other indexing methods as provided by the office].
(b) Each file maintained under subsection (a) must also include any security interest, title
brand, or stolen property report applicable to the vehicle, including the name and address of any
secured party or claimant to ownership.

(c) [The information required in this section, except _____, is a public record accessible
pursuant to this [act]]. [Cross-reference other laws.]

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

Derived from UMVCT Section 8. Companion to COTA Section 23. 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 WITHOUT CERTIFICATE OF
TITLE.

(a) The office shall create a certificate of title upon receiving an application that is not
accompanied by submission of an executed certificate of title or certificate of origin, 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, at least 30 days’ notice of the application has been sent to all parties having an interest in the vehicle as indicated in the files of the office, and no objection has been received by the office; and

(3) the applicant presents other documentation required by the office to evidence the applicant’s interest, and there is no credible information indicating theft, fraud, or any undisclosed or unsatisfied security interest, title brand, lien, or adverse claim submitted to the office.

(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 direct damage, including reasonable attorney’s fees but not consequential damages, resulting from creation of a certificate of title under subsection (a). The bond or other source of indemnity must be in an amount equal to no more than twice the value of the vehicle as determined by the office.

(c) The office shall keep a bond, indemnity, or other security required under this section unless no claim against it has been received by the office within three years after creation of the certificate of title under subsection (a).

(d) In addition to, or in lieu of, the requirements of subsections (b) and (c), the office may include in the certificate of title created under subsection (a) a legend indicating that the certificate of title was created without submission of an executed certificate of title. If a claim adverse to interests indicated on the certificate of title has not been received by the office within
three years after creation of the certificate of title, upon a request in a form and manner specified by the office, the office shall remove the legend 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 a certificate of title. It requires a supporting affidavit, 30 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 23. Section 23 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, but this section applies only if those sections do not.

SECTION 25. REPLACEMENT CERTIFICATES OF TITLE.

(a) If a certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the first secured party, as indicated in the files of the office, or if there is no secured party so indicated, the owner, may make application for and obtain a replacement certificate of title by furnishing information satisfactory to the office.

(b) An application for a replacement certificate of title must be submitted in a record signed by the applicant.

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

(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
collateral, and has been authorized by the debtor.

(c) A security interest entry form is not received if the office rejects the form because:
   (1) the record is not delivered by a means of communication authorized by the office;
   (2) an amount equal to or greater than the required filing fee is not tendered;
   (3) the record does not contain 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 under subsection (a), and shall make evidence of that 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 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 this 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 receipt of the form is 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. PERFECTION 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 lien entry form is perfected, upon the
later to occur of receipt of the form or attachment of the security interest pursuant to [Uniform
Commercial Code Section 9-203]. Except as provided in subsections (e) and (f), a security
interest in a vehicle may be perfected only by receipt of a security interest entry form under
Section 26.

(b) The office may create a certificate of title with the name of a lessor, consignor or
other bailor, or secured party as owner instead of as secured party. A certificate of title naming
such a person as owner perfects any interest of the person as lessor, consignor or other bailor, or
secured party. The office may treat the person as the owner for all 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 and the security interest
entry form is effective under Section 26(a) and for purposes of perfection under subsection (a).
A security interest entry form that does not meet the requirements of Section 26(a) is received
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], and an otherwise valid transfer 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 transferor under this [act] and the [Uniform Commercial Code] including, as
applicable, perfection of the security interest as against purchasers from the vehicle owner. Any
such perfection remains effective even if the transfer and transferee 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 the secured party indicated in the files of the office or on the certificate of title, takes
free of an interest 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] is inventory held for sale or
lease by a person or leased by that person as lessor and that person is in the business of selling or
leasing goods of that kind, this section does not apply to a security interest in that collateral
created by that person.

(f) A secured party may perfect a security interest in a vehicle by taking possession of the
vehicle only in the circumstances described in [Uniform Commercial Code] Section 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 3, 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), 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) are patterned on UCC Article 9 Sections 9-311(d) and 9-313(b), 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. EFFECTIVE DATE OF SECURITY INTEREST ENTRY.

[If a record constituting a security interest entry form is received by the office before or within [30] days after the date a [purchase money security interest] security interest attaches under [Uniform Commercial Code Section 9-203], the effective date of perfection is the date the security interest attaches.]

Preliminary Comments

This is modeled on UCC Article 9 Section 9-317(e), which provides a 20 day grace period for perfection of security interests under Article 9. For certificate of title goods this issue is governed by the certificate of title law rather than Article 9, pursuant to Article 9 Section 9-311(a)(3). Section 28 covers non-PMSI as well as PMSI transactions, and extends the grace period to 30 days. The extended grace period is needed in this context due to the possible need to acquire the certificate of title from its prior holder. Bracketed language would limit this provision to PMSIs. However, this limitation may be inappropriate, because the need for an
extended grace period often arises in a refinance transaction where the prior lender holds the
certificate of title. Absent this provision, the owner may be unable to refinance because of the
inability to obtain the certificate of title from the prior lender within the UCC grace period.
These issues are unique to certificate of title transactions and are not handled well under the more
general rules of the UCC, suggesting a need for this provision.

This is inconsistent with the Bankruptcy Code grace period at 11 U.S.C. Section
574(c)(3)(B), as interpreted by the U.S. Supreme Court in Fidelity Financial Services v. Fink,
118 S. Ct. 651 (1998). Bankruptcy law will control for purposes of preferential transfer issues in
bankruptcy cases. However, other Bankruptcy Code provisions apparently recognize the primacy
of state law on this issue. See, e.g., Bankruptcy Code Sections 362, 546, and 547(e)(1)(B). Thus
the Fink rationale may need further consideration, and in any event some courts have been able to
minimize the resulting problems using other theories. See, e.g., In re Lockhart, 2000 Bankr.
LEXIS 1854 (Bankr. D. Ore., Dec. 15, 2000) (77 day delay in perfection was protected from
avoidance as a preference, under the contemporaneous transaction exception at Bankruptcy Code
Section 547(c)(1)). Section 28 provides an appropriate grace period for certificate of title
transactions, consistent with Bankruptcy Code Sections 362, 546, 547(c)(1), and 547(e)(1)(B). It
should provide useful guidance to the courts, in bankruptcy and nonbankruptcy cases.

See also Section 26(d), requiring the office to maintain a public record of the date each lien
entry form is received. This date may be essential in determining the effective date of perfection
and the priority of the security interest.

SECTION 29. UNIFORM SECURITY INTEREST ENTRY FORM.

SECTION 30. DUTIES AND OPERATION OF FILING OFFICE.

[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 2, and Sections 8, 9, and 10.]
SECTION 32. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this [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

SECTION 35. REPEALS

SECTION 36. SAVINGS CLAUSE

SECTION 37. TRANSITION CLAUSE