

D R A F T

FOR DISCUSSION ONLY

# UNIFORM CERTIFICATE OF TITLE ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM LAWS

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

# UNIFORM CERTIFICATE OF TITLE ACT

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ON UNIFORM LAWS

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# 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, financiers, owners/lessees, or others involved need be denied the convenience or economies of electronic records.

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

In addition, as business conditions and practices have evolved, state certificate of title laws that are nonuniform and sometimes outmoded have become inadequate to deal with current and

1 emerging issues. The need for a consistent informational structure and uniform rules dealing  
2 with common title problems has become increasingly apparent.

3  
4 Responses to these conditions are among the primary purposes of this Act.

#### 5 6 Electronic and Paper Titles — Enactment Flexibility

7  
8 Because of state funding and a variety of other factors it would be unrealistic to expect (in the  
9 manner of the recent Article 9 revisions) simultaneous multi-state effectiveness of a statutory  
10 certificate of title revision. The states vary greatly in terms of the speed and extent of embracing  
11 the movement toward electronics. For these reasons, and because some important uses for paper  
12 certificates of title remain, the Act provides for parallel and compatible systems of electronic  
13 titles and paper titles; like revised Article 9, the Act is medium neutral, but it goes beyond mere  
14 neutrality to provide specific alternative and consistent legal structures for electronic and paper  
15 certificates of title and transactions, and addresses the relation between them.

16  
17 Thus, the Act is intended to permit each enacting state the flexibility to adopt electronic  
18 titling practices on its own schedule and as available funds allow. The Act is also designed so  
19 that no significant transition periods are needed: it provides for simultaneous administration of  
20 fully complementary systems of electronic and paper certificates of title. Neither system  
21 interferes with the other, and a state could adopt or utilize an electronic title system at any time,  
22 or to any extent, or not at all, without disruption. Enactment will allow states with different  
23 systems and approaches to technology issues to achieve uniformity in law and information  
24 interchange while continuing their administrative and technological diversity. Enactment will  
25 facilitate consistency with Article 9, facilitate the interstate exchange of information and transfers  
26 of title, help resolve common titling problems, discourage title fraud, and promote greater  
27 consistency of titling law with commercial practice, to the benefit of all parties to transfers of  
28 interests in vehicles.

#### 29 30 Study and Drafting History

31  
32 In 1955, the Conference promulgated a motor vehicle title act which, although enacted by  
33 few states, has influenced the statutes of many. The factors enumerated at the beginning of this  
34 Prefatory Note suggested the need for a new look at the potential benefits of an updated uniform  
35 effort on this subject by the Conference.

36  
37 Like all Conference legislative drafting efforts, the appointment of a drafting committee  
38 followed several years' work by a study committee, but in this instance the antecedents are even  
39 more extensive. For nearly all of the past decade, a Task Force of the Uniform Commercial  
40 Code Committee of the Business Law Section of the American Bar Association (ABA) has been  
41 devoted to study of the problems and opportunities attendant to certificate of title questions; the  
42 ABA Advisor to the Drafting Committee and the Reporter for this Act have been active in the  
43 leadership of that effort, and the Drafting Committee is drawing heavily on that ABA work.

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

#### 10 11 Matters of Scope 12

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

22  
23 Also, after consideration by the leadership of the Conference, the Drafting Committee, and  
24 Observers, this draft reflects affirmative determinations to leave substantially as is certain  
25 provisions of the existing states' laws. Perhaps most notable in this respect are title branding,  
26 which is diverse among the states in both substance and administration, "lemon laws," and laws  
27 relating directly to fraudulent activity, which are also diverse and combine local common law and  
28 criminal and civil statutory law. This draft requires notation and carry-forward of existing,  
29 known title brands, but does not seek to define those requirements. A section of this act (section  
30 31) has been reserved for a possible, optional model provision if that is later deemed appropriate.

31  
32 In light of the diversity, current and probably future, in various states' electronic systems and  
33 capabilities and the administration of those systems, the Drafting Committee has attempted to  
34 avoid to the extent possible mandating or affecting the technical details of the states' electronic  
35 systems, as distinguished from the information legally required to be maintained and furnished  
36 by those systems. Consistency is being attempted as well with systems in use by law enforcement  
37 and industry groups. Thus the goal of the draft is uniformity in information interchange and legal  
38 results, but not technology or specific operational procedures.

#### 39 Title Fraud, Odometer Disclosure and the Like — Coordination with Federal and Other State 40 Laws 41

42 Under the federal Anti Car Theft Act of 1992 and the Anti Car Theft Improvements Act of  
43 1996, under the responsibility of the Department of Justice, the National Motor Vehicle Title

1 Information System (NMVTIS) is being developed and tested, with information input from the  
2 states. In the words of the American Association of Motor Vehicle Administrators:

3  
4 The Act specifies that the information within NMVTIS shall be available to  
5 jurisdictions; federal, state and local law enforcement officials; insurance carriers; and  
6 other prospective purchasers (e.g., individuals, auction companies, and used car dealers).  
7

8 NMVTIS allows jurisdictions to verify the validity of titles prior to issuing new titles.  
9 This inhibits title fraud and auto theft by making it harder to title stolen vehicles. Law  
10 enforcement officials can get information on any particular vehicle or title, and also are  
11 provided access to junk yard and salvage yard information, allowing them to identify  
12 illegal activities. The consumer has access to the latest odometer reading and any current  
13 or former title brands related to the value and condition of a particular vehicle. This  
14 allows consumers to make more informed decisions on whether to buy a vehicle and at  
15 what purchase price. Businesses that are prospective purchasers (e.g., dealers or auctions)  
16 and insurance carriers also are allowed to get information on a vehicle. This information  
17 includes title history, odometer, and brand data, which allows them to make informed  
18 decisions on whether to buy or insure the vehicle.  
19

20 Clearly, states' law enforcement and vehicle title administration agencies will have electronic  
21 tie-ins and coordination with NMVTIS, for, among other things, prevention of title and odometer  
22 fraud. This Act is intended to enable coordination with, rather than to duplicate, the federal  
23 initiative, by providing the means for state titling practices that are more consistent with the  
24 federal system.  
25

26 Odometer disclosure laws, federal and state, are recognized by this Act, which is intended to  
27 facilitate a titling system to exist in coordination with those laws. Section 12 of this Act and the  
28 Reporter's Note thereunder describe the Act's accommodation of electronic disclosures to satisfy  
29 statutes written in contemplation, at the time of enactment, of paper disclosures.  
30

### 31 Focus on Title Issues 32

33 Finally, the inherent limitations on the scope of this Act should be noted. It is recognized that  
34 not every type of problem involving vehicle sales and finance can be addressed in the Act. The  
35 focus of the Act is the legal structure for administration of certificate of title issues. The overall  
36 purpose is to create a consistent legal structure to facilitate efficient resolution of common titling  
37 issues and the efficient handling of title-related transactions. The Act thus focuses on the duties,  
38 authority, and responsibilities of title administrators. To purport to resolve every issue that may  
39 arise in relationships between the parties to private transactions would be such an expansion of  
40 scope as to obscure the basic purpose of this Act and effectively preclude its uniform enactment.  
41 For example, many issues relating to sales contracts, security interests, and consumer protection  
42 are covered by the Uniform Commercial Code or consumer protection laws rather than this Act.

1 The Act does not displace those laws as regards basic contract, tort law, or consumer protection  
2 issues.

3  
4 Nonetheless, by providing for improved administrative rules and remedies governing title  
5 issues, creating better and more consistent data flows and information, and providing increased  
6 uniformity in the law, the Act will make certificates of title more meaningful and useful for all  
7 parties. The resulting increased integrity of the title system will benefit all involved.



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## SECTION 2. DEFINITIONS.

(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.

(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

1 vehicle identification number and a description of the vehicle, including as applicable the make,  
2 model, model year, and body type.

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

5 (A) which is:

6 (i) evidence of ownership of a vehicle; or

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

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

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

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

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

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

18 (6) “Deliver” means a voluntary transfer of possession of a record or its transmission  
19 by any usual means, properly addressed to the recipient and with the cost of delivery provided  
20 for.

1           (7) “Electronic certificate of origin” means a certificate of origin created as a record  
2 or records consisting of information stored only in an electronic medium and retrievable in  
3 perceivable form.

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

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

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

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

19          (12) “Lien creditor” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (22) “Secured party” means:

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

3 (B) a person that holds an agricultural lien;

4 (C) a consignor;

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

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

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

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

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

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

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

18 (25) “Title brand” means any designation of previous damage, use, or condition that  
19 [this [act] or] law other than this [act] requires to be indicated on a certificate of title.

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

22 (27) “Transferee” means a person who takes by transfer.

(28) “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.

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

(30) “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).

1	“Fixtures”	UCC Section 9-102(a)(41).
2	“Good faith”	UCC Section 1-201(b)(20).
3	“International transaction”	UCC Section 1-301(a)(2).
4	“Merchant”	UCC Section 2-104(1).
5	“Notice; Knowledge”	UCC Section 1-202.
6	“Organization”	UCC Section 1-201(b)(25).
7	“Representative”	UCC Section 1-201(b)(33).
8	“Security interest”	UCC Sections 1-201(b)(35) and 1-203.
9	“Seller”	UCC Section 2-103(1)(o).
10	“Send”	UCC Section 1-201(b)(36).
11	“Value”	UCC Section 1-204.

### **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.

1 In addition this definition of certificate of title includes receipt by the office of a security  
2 interest entry form pursuant to Section 26. This is needed because it may be necessary to perfect  
3 a security interest pursuant to Section 27(a), by receipt of a security interest entry form under  
4 Section 26, before the office has received an application for a certificate of title under Section 8.  
5 Thus, in the absence of a certificate of title created under Sections 8 and 9, a security interest  
6 entry form received pursuant to Section 26 will create a certificate of title for purposes of this  
7 [act], including choice of law under Section 3 and perfection under Section 27.  
8

9 The definition requires a certificate of title to have four basic elements: (1) a record; (2)  
10 created or authorized by the appropriate office of this State; (3) evidencing title to a vehicle or  
11 indicating perfection of a security interest; and (4) created pursuant to provisions in this [act]  
12 providing (in conjunction with UCC Article 9) for perfection of security interests. *See also* the  
13 requirements for creation of a certificate of title pursuant to this [act], at Sections 8, 9, and 10;  
14 provisions governing security interest entry forms at Sections 26, 27, and 28; choice of law rules  
15 at Section 3.  
16

17 The definition of “certificate of title” is different from UCC Article 9 Section 9-102(a)(10) in  
18 some important ways. The Article 9 definition incorporates by reference the standards of the  
19 applicable certificate of title law. COTA is that law, and therefore cannot directly use the Article  
20 9 incorporation-by-reference approach. Moreover, as noted this [act] provides for perfection of a  
21 security interest on receipt by the office of a security interest entry form, subject to the additional  
22 UCC Article 9 requirements, even if the security interest is not otherwise indicated on a  
23 certificate of title or in the office files or the office never receives an application for a certificate  
24 of title. *See* Sections 3(b), 8, 26, and 27. While this is consistent with Article 9 Section 9-  
25 102(a)(10), this [act] requires a definition that directly encompasses these functions, while  
26 Article 9 can simply tie into this [act] by reference. Therefore, receipt by the office of a security  
27 interest entry form pursuant to Section 26 creates a certificate of title within the definition at  
28 Section 2(a)(3), and triggers application of this [act] pursuant to Section 3, even if there is no  
29 other record covering the vehicle in the files of the office.  
30

31 Pursuant to Section 10(c), the certificate of title must provide for reassignment of title by  
32 execution of the certificate of title, or a related form, including dealer reassignments and secured  
33 powers of attorney, *e.g.*, by execution of a form that is part of or related to the certificate of title.  
34 *See* the definition of “execute.”  
35

36 Section 2(a)(5) defines what it means to “create” a certificate of title. This definition relates  
37 to other definitions and provisions of this [act]. *See, e.g.*, the definitions of “Electronic  
38 certificate of title” and “Written certificate of title,” Section (2)(a)(8) and (30); Section 9  
39 (obligation of the office to create a certificate of title). As noted a certificate of title can be  
40 created by receipt in the office of a security interest entry form. *See* Sections 3, 26, 27, and 28.  
41 A certificate of title can also be created by the office making a file pursuant to Sections 8,9, and  
42 10, or by issuance of a written certificate of title pursuant to those sections.  
43



1 Under Section 2(a)(8), “Electronic certificate of title” designates a certificate of title that  
2 meets all requirements in the definition of a certificate of title and is only in electronic form. *See*  
3 *also* Section 10 and Section 23. This definition is modeled on the UCC Article 9 definition of  
4 “Electronic chattel paper” at Section 9-102(a)(31). The general purpose is to create a parallel  
5 system for electronic certificates of title, somewhat like that for electronic chattel paper in Article  
6 9, while continuing to recognize the traditional primacy of a written certificate of title if one  
7 exists. *See* Sections 14, 17, 19, 24-27; and the definition at Section 2(a)(30).

8  
9 The definition of “execute” at Section 2(a)(9) applies only when used to denote execution of  
10 a certificate of title or certificate of origin and not, *e.g.*, as the term is used in Section 2(a)(23).

11  
12 The definition of “lien creditor” at Section 2(a)(12) is taken directly from UCC Article 9  
13 Section 9-102(a)(52), for purposes of consistency with the UCC. By its terms the list of  
14 examples at Section 2(a)(12)(A) is illustrative, not exclusive. Other examples include a  
15 garnishor or judgment lien creditor.

16  
17 The definition of “person” at Section 2(a)(17) is taken from UCC Article 1 Section 1-  
18 201(b)(27), for purposes of consistency with the UCC. The list is illustrative, not exclusive.  
19 Another example would be the trustee of a statutory trust.

20  
21 The definition of “Purchase” at Section 2(a)(18) is identical to UCC Section 1-201(b)(29)  
22 (2002 uniform text), for purposes of consistency; *see also* Section 1-201(32) of old Article 1.  
23 Some parts of this definition are directed at purchases of instruments or investment securities or  
24 the like, and may not be applicable to vehicles, *e.g.*, the words “discount,” “negotiation,” and  
25 “issue or reissue.” The UCC definition is nonetheless included in its entirety for purposes of  
26 consistency with the UCC.

27  
28 The definition of “Purchaser” at Section 2(a)(19) is identical to UCC Article 1 Section 1-  
29 201(b)(30) (2002 uniform text), for purposes of consistency with the UCC.

30  
31 Section 2(a)(21) references and incorporates revised UCC Sections 1-201(b) and 1-203 (2002  
32 uniform text). If a state has not enacted revised Article 1, the citation should be Section 1-  
33 201(37) of old Article 1 (as enacted in that state).

34  
35 The terms “Transfer” and “Transferee” at Section 2(a)(26) and (27) denote any conveyance of  
36 an interest, whether voluntary or by operation of law, in contrast to a “purchase,” which denotes a  
37 voluntary conveyance.

38  
39 Two fundamental purposes are evident in these definitions: (1) Allowing purely electronic  
40 certificates of title and origin and related documentation (with a tiered option provided at  
41 Sections 8, 9, 10, and 19 to allow certain persons to request a paper certificate); and (2) an  
42 allowing some transactions relating to written certificates of title to be conducted electronically  
43 (*e.g.*, assigning certificates of origin, and perfection of security interests under Sections 26 and

27). 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.

1 (b) A vehicle is covered by a certificate of title when an application for a certificate of  
2 title or a security interest entry form and the applicable fee are received by the office in  
3 accordance with this [act]. A security interest entry form is sufficient for this purpose only if the  
4 debtor is located in this State, and a certificate of title has not been created in another state. A  
5 vehicle ceases to be covered by a certificate of title in this State at the earlier of the time the  
6 certificate of title ceases to be effective under this [act] or the time the vehicle subsequently  
7 becomes covered by a certificate of title, other than a certificate of title evidenced only by a  
8 security interest entry form, created in another jurisdiction.

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

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

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

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

20 (e) For the purposes of this section, "certificate of title" means a certificate of title as  
21 defined in Section 2(a)(4) except the record may be created or authorized by the government  
22 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:**

“Certificate of title.” Section 2(a)(4).

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

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

“Receipt of security interest entry form.” Section 26.

1       **SECTION 4. EXCLUSIONS.** Unless the vehicle is covered by a certificate of title, this  
2 [act] does not apply to a vehicle owned by the United States, the government of a country other  
3 than the United States, an Indian tribe, this State, or a [local government] in this State.

4                                   **Preliminary Comments**

5       This section is derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft  
6 Act of 1955 (UMVCT) Section 2. UMVCT Section 2 additionally provides specific exclusions  
7 for construction equipment, farm equipment, golf carts, boat trailers, and the like. These have  
8 been removed from Section 4, as redundant in view of the definition of “vehicle” at  
9 Section 2(a)(28).

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

15                                   **Preliminary Comments**

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

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24       **SECTION 6. CERTIFICATE OF ORIGIN.**

25       (a) If a certificate of origin is created or required to be created under law other than this  
26 [act], the manufacturer, importer, or distributor of a vehicle that creates or is authorized to create  
27 a certificate of origin for the vehicle, upon transfer of ownership of the vehicle, shall create and  
28 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



1 office that] [there are grounds for concluding that] the application is fraudulent or would  
2 facilitate a fraudulent or illegal act or otherwise fails to comply with law other than this [act], the  
3 office shall create a certificate of title. The certificate of title must show the transferee as vehicle  
4 owner and the existence of any outstanding security interest disclosed under Section 8 or for  
5 which the office has received a security interest entry form under Section 26 or which is  
6 otherwise indicated in the files of the office.

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

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

14 (d) If the office has created a certificate of title it may revoke the certificate of title only  
15 for a failure of the application to meet the requirements of this [act] and after [30] days' notice  
16 served [in person or sent by regular mail] [as required for service of process in a civil action] to  
17 the applicant and to all secured parties indicated in the files of the office. The notice shall  
18 provide an opportunity for a hearing at which the applicant may present evidence in support of  
19 the application. Revocation of a certificate of title pursuant to this section does not revoke  
20 perfection of a security interest or the effects of a security interest entry form received pursuant to  
21 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;

1 (4) the vehicle identification number of the vehicle;

2 (5) a description of the vehicle including, as required by the office, make, model,

3 model year, and body type;

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

5 (7) all known title brands as required by [this act or] law other than this [act], or as

6 previously indicated on a certificate of title created in this state or another jurisdiction or in an

7 application submitted pursuant to Section 8. The brand may use abbreviations, but not symbols,

8 and must identify the jurisdiction that originated the title brand. If the meaning of the previous

9 title brand is not easily ascertainable or cannot be accommodated on the certificate of title, the

10 certificate of title may state: “Previously branded in [jurisdiction that previously indicated the

11 title brand].”

12 [(b) If a vehicle was previously registered in a jurisdiction that does not provide for

13 indication of the first security interest in or on a certificate of title as a condition or consequence

14 of perfection, the office shall include a legend indicating that the vehicle may be subject to an

15 undisclosed security interest or that the vehicle was imported from a jurisdiction that does not

16 require indication of a security interest on the certificate of title. If notice of a security interest is

17 not received by the office within [one year] [four months] after creation of the certificate of title,

18 upon application of the owner or a secured party and submission of the certificate of title, the

19 office shall create a certificate of title that does not include the legend.]

20 [(b)][(c)] A certificate of title must provide for subsequent execution of the certificate

21 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 reperfecting 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

1 failure to indicate a  
2 statutory or common law lien on a certificate of title covering the vehicle does not invalidate the  
3 statutory or common law lien.

#### 4 **Preliminary Comments**

5 This section is derived from Section 9 of the UMVCT. It makes clear that enforcement of a  
6 lien by judicial process must be effected against the goods, not the certificate of title. This  
7 section does not bar mandatory injunctive or other in personam relief against a person wrongfully  
8 withholding a certificate of title, *e.g.*, a turn-over order following a successful replevin action. In  
9 addition, if a certificate of title is being wrongly withheld by a third party, there may be recourse  
10 under Section 16, 17, 19, 20, 21, 24, or 25. For example, a lien creditor could seek possession of  
11 the vehicle using legal process, and then obtain a certificate of title under Section 21 or 24.

#### 12 13 **SECTION 12. ODOMETER DISCLOSURE**

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

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

22 (c) Execution of a record that provides the information required for an odometer mileage  
23 disclosure under federal law satisfies the requirements of this section, but this [act] is otherwise  
24 subject to [reference state odometer law].

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## Preliminary Comments

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

It is not necessary for this [act] to restate or specifically incorporate these federal law requirements. However, a general reference to those requirements may be helpful in alerting interested parties to the federal requirements. That is one purpose of this section.

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

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## 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

1 information required in an application for a certificate of title. If the vehicle is subject to a lease,  
2 the registration must also include the lessee's name and address, and the termination date of the  
3 lease, and may  
4 designate the lessee or the lessor (or both) as the person to receive communications relating to  
5 the certificate of title.

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

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

14 [(e) Law other than this [act] requires registration under this section as the basis for  
15 payment of excise taxes relating to vehicles or fees required for issuance or renewal of license  
16 tags.]

### 17 Preliminary Comments

18 The purpose of this section is to allow a procedure for registration of information by the  
19 office for purposes not related to certificate of title transactions. Some states use registration as a  
20 trigger for other laws or requirements, *e.g.*, relating to taxes or exhaust emissions. This section  
21 accommodates that function. An example would be the need of a lessee to register in order to  
22 purchase or renew license tags for a vehicle owned by the lessor. This section would permit the  
23 lessor to provide registration information to the lessee or the office, who could then register the  
24 information in order to allow the purchase of license tags. Another example would be a  
25 purchaser of a vehicle who cannot satisfy the requirements for application of a certificate of title  
26 but can provide sufficient registration information to the office to permit the purchase of license

1 tags for the vehicle. The office should be cautious to limit the use of registrations and not allow  
2 this procedure to be used as a substitute for certificates of title.  
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4 This section is derived partially from the UMVCT § 11. The requirement for a bond at  
5 subsection (c) is derived from UMVCT § 11(b). The bracketed language in subsection (c) is  
6 intended to provide standards for the conditions on registration that can be imposed pursuant to  
7 that subsection: Making clear that conditions can be imposed only to effectuate state law, but for  
8 that purpose as the office deems appropriate; and any requirement for a bond is at the discretion  
9 of the office. The final bracketed language is an alternative, streamlined but not as elaborate in  
10 terms of the balance between standards and discretion.  
11

12 Choice of law concerns with respect to registration under old Article 9 Section 9-103(2)(b)  
13 were resolved in revised Article 9 Section 9-303 and do not exist under Section 3. Therefore  
14 there are no choice of law implications relating to certificates of title as a result of registration  
15 under this section.  
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#### 18 **SECTION 14. VOLUNTARY TRANSFER OF OWNERSHIP.**

19 (a) If ownership of a vehicle covered by a certificate of title created in any jurisdiction is  
20 transferred to a purchaser, the purchaser may require the transferor to promptly execute the  
21 certificate of title to the purchaser pursuant to this [act] and the person authorized to execute the  
22 certificate of title shall, as promptly as practicable and in compliance with law other than this  
23 [act], execute the certificate of title to the purchaser.

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

26 (c) Except as otherwise provided in this [act], a transfer of ownership is not rendered  
27 ineffective by the failure to execute the certificate of title as provided in subsection (a), but is not  
28 effective as to other persons claiming an interest in the vehicle until the requirements of  
29 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           (1) gives value and receives possession of the vehicle and valid execution of the  
2 written certificate of title, in good faith and in accordance with reasonable commercial standards  
3 of fair dealing; and

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

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

8           (c) A purchaser of goods acquires all ownership interests that the transferor had or had  
9 power to transfer, except that a purchaser of a limited interest acquires rights only to the extent of  
10 the interest purchased. A person having voidable title to a vehicle has power to transfer a good  
11 title to a good faith purchaser for value. When a vehicle has been delivered under a transaction  
12 of purchase the purchaser has that power even though:

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

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

15           (3) it was agreed that the transaction was to be "cash sale;"

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

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

19           (d) In this section "ordinary care" means observance of reasonable commercial standards,  
20 prevailing in the area in which the person is located, with respect to the type of transaction in  
21 question. It does not require an inquiry by a purchaser beyond examination of the written  
22 certificate of title and verification of the transferor's identity, unless such an examination or

1 verification would suggest to a reasonable person the need for further inquiry.

## 2 **Preliminary Comments**

3 Subsection (a) is patterned on UCC Article 9 Section 9-337, but with important differences:  
4 Subsection (a) applies to intrastate sales, while Section 9-337 applies only to interstate scenarios;  
5 unlike Section 9-337, subsection (a) allows a purchaser to take free of a security interest properly  
6 perfected in the same state (though only if it is not indicated on the certificate of title executed to  
7 the purchaser). However, subsection (a) also imposes requirements on the purchaser not found in  
8 Section 9-337: Execution of the certificate of title; good faith; reasonable commercial standards  
9 of fair dealing; and a lack of notice (compared to only the lack of knowledge required by Section  
10 9-337). These requirements assure that only the most innocent and prudent purchaser will  
11 qualify for the exceptional protection provided by this section. Moreover, a purchaser who  
12 prevails under subsection (a) will be subject to a comparative negligence standard under  
13 subsection (b), if the purchaser failed to exercise ordinary care.

14  
15 Subsection (c) also allows the purchaser to take free of adverse ownership claims and lien  
16 creditors whose interests are not indicated on the certificate of title executed to the purchaser.  
17 Subsection (c) is designed to be consistent with UCC Section 2-403, to protect good faith  
18 purchasers for value, so as to conform certificate of title issues to the equivalent rules in UCC  
19 Article 2. *See also* Sections 17 and 27; Article 2A Sections 2A-314 and 2A-315. “Notice” for  
20 purposes of this section is defined at UCC Section 1-202 (2002 uniform text), as actual  
21 knowledge or “reason to know;” “value” is defined at UCC Section 1-204. Failure of a purchaser  
22 to obtain execution of a certificate of title does not bar good faith purchaser status.

23  
24 Together Sections 14-18 comprise a package that accommodates electronic and informal  
25 transfers while recognizing the primacy of a written certificate of title and protecting buyers in  
26 the ordinary course of business. Execution of an electronic certificate of title under Section 14(a)  
27 and (b) would have priority over an informal transfer under Section 14(c), while execution of a  
28 written certificate of title under Section 16(a) would have priority over both.

29  
30 Section 16(a) allows a purchaser (other than a dealer) to rely on a certificate of title in a  
31 commercially reasonable purchase of a vehicle for value and without notice of an adverse claim  
32 not indicated on the certificate of title. Other evidence of reliance is not required: Section 16(a)  
33 requires only that the “purchaser” (as defined in Section 2(a)(19)) take delivery of the vehicle for  
34 “value” and without “notice” of the adverse claim after a valid certificate of title has been created  
35 without an indication of the adverse claim. This resolves, in favor of such a purchaser, conflicts  
36 between this purchaser and a former owner, secured party, or other claimant whose interest may  
37 be superior to the purchaser’s transferor. As noted, Section 16(a) is similar to Article 9  
38 Section 9-337, except that Section 16(a) applies to intrastate transfers and imposes additional  
39 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

1 represents the base line rule, with subsection (b) an exception. *See also* Sections 16-18 and 26-  
2 27; UCC Article 2A Section 2A-304 and Official Comment.

3  
4 Subsection (b) recognizes an exception for a buyer in ordinary course of business (BIOCB),  
5 based on Article 9 Section 9-320. *Cf.* Section 16(c). Section 9-320 cuts off security interests  
6 created by the seller. Subsection (b) recognizes and incorporates this UCC provision in the  
7 context of a certificate of title transaction, and specifies that a buyer of a vehicle can be a BIOCB  
8 even if that person does not obtain a certificate of title. *See also* UCC Sections 2A-304, 2A-305.  
9

10 The result is to allow the BIOCB of a vehicle covered by a certificate of title to take free of  
11 claims and security interests created by the seller (*e.g.*, an inventory security interest created by  
12 an auto dealer) even if the secured party holds the certificate of title; but, like Section 9-320,  
13 subsection (b) does not allow the BIOCB to take free of a security interest created by a consignor  
14 and perfected by certificate of title lien entry, because that is not a security interest created by the  
15 seller, unless the consignor and dealer/consignee are the same or are so closely connected as to be  
16 treated as the same entity. This reflects long-standing UCC policy that even a BIOCB only takes  
17 free of security interests created by his or her seller, not interests of other or prior parties. *But see*  
18 subsection (c) and Section 16(c) for possible buyer remedies in this situation.  
19

20 Section 17 is consistent with the UCC and the case law. It also resolves a related issue: Can a  
21 buyer of a vehicle from a dealer be a BIOCB without execution of the certificate of title? The  
22 UCC definition of BIOCB is not specific on this, but is broad enough to accommodate this as a  
23 common dealer practice. The cases are split. However, this is a common dealer practice, and  
24 subsections (b) and (c) protect a consumer buying from a dealer despite the lack of a certificate of  
25 title. Rights as between the dealer and its secured party, such as the priorities of claims to the  
26 sales proceeds, are left to other law. *See, e.g.*, UCC Article 9 Sections 9-102(a)(64), 9-315, 9-  
27 322.  
28

## 29 **SECTION 18. EFFECT OF ERRORS OR OMISSIONS.**

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

33 (b) Subject to Section 16(a) and (b), if a certificate of title, application for a certificate of  
34 title, certificate of origin, security interest entry form, or other record contains when it is created  
35 errors or omissions that are seriously, a purchaser of the vehicle takes free of any claim or

1 interest the validity of which is dependent on the erroneous information or the absence of the  
2 omitted information to the extent that the purchaser gives value in reasonable reliance on the  
3 erroneous information or the absence of the omitted information.

4 (c) Except as otherwise provided in subsection (d), a description of the vehicle covered  
5 by a certificate of title, application for a certificate of title, certificate of origin, security interest  
6 entry form, or other record is sufficient, whether or not the description and vehicle identification  
7 number are specific and accurate, if the information in the record, including the vehicle  
8 identification number, reasonably identifies the vehicle.

9 (d) With respect to a security interest or other interest indicated in the files of the office  
10 and not indicated on a written certificate of title, if a search of the files of the office using correct  
11 required information, and using the office's standard search logic, if any, does not discover the  
12 file that discloses the security interest or other interest, the failure to provide the information  
13 accurately is seriously misleading.

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

### 16 Preliminary Comments

17 Often a certificate of title, application for a certificate of title, certificate of origin,  
18 security interest entry form, or other record that fails to state accurately the name and address of  
19 the owner, the name and address of the secured party, or the description of the vehicle, is not  
20 seriously misleading solely for that reason, because the certificate of title is provided to the  
21 purchase or secured party by the owner, the correct or sufficient information is easily  
22 ascertainable, and the error causes no injury. Section 18 makes clear that a certificate of title  
23 containing erroneous information, or omitting information, is not rendered invalid by the  
24 erroneous information or omission, and is valid and effective, except to the extent that a  
25 purchaser is misled by the erroneous information or omission. This section is modeled on  
26 Article 9 Sections 9-108, 9-337, 9-338, 9-502, and 9-506. The purpose is to prevent harmless  
27 errors from invalidating a transaction, *e.g.*, recognizing that errors in the parties' names or an

1 error in the description of the vehicle often will not mislead parties to a certificate of title  
2 transaction. This issue is different than under Article 9, where an error in the debtor's name can  
3 mislead filing searches. Thus, no equivalent to Article 9 Section 9-506(c) is needed if the  
4 security interest is noted on a written certificate of title. For other cases, subsection (d) provides  
5 a rule equivalent to Section 9-506(c).  
6

7 Subsection (b) provides a sanction, short of invalidation, where a seriously misleading error  
8 causes damage to a reliance party. *See* subsection (d) for a procedure to determine if an error  
9 involving a security interest is seriously misleading. It is not misleading for a secured party or  
10 lessor to be indicated as the owner on the certificate of title. *See* Section 27(b).  
11

12 Subsection (c) provides general rules governing errors or omissions in records pertaining to  
13 certificates of title, modeled on Article 9 Section 9-506(a) and (b). Except as provided at  
14 subsection (d), an error in the name of the owner or secured party, or the description of the  
15 vehicle, is unlikely to prejudice third parties in a certificate of title transaction.  
16

17 An error in the vehicle identification number (VIN) will not be seriously misleading in many  
18 cases, *e.g.*, where a security interest entry form is submitted to the office along with a written  
19 certificate of title covering the vehicle. The correct VIN will be apparent on the certificate of  
20 title and a minor VIN error on the security interest entry form should not prevent the security  
21 interest from being noted on the certificate of title or in the files of the office. Similarly, an error  
22 in typing the VIN on a written certificate of title will normally be minor and harmless, and will  
23 not impair the effectiveness of the certificate of title or its execution. The same is true for errors  
24 in the names of the parties to a transaction. These are examples of harmless errors under  
25 subsections (a), (b), and (c).  
26

27 The exception is described at subsection (d). The exception at subsection (d) is necessary  
28 where the search depends on the files of the office, because in this context an error in the name of  
29 the owner or VIN could result in a record being mis-filed or not discovered in a proper search of  
30 the files of the office, depending on the search logic and indexing system being used.  
31

32 Bracketed subsection (e) would change this analysis by rendering a seriously misleading  
33 security interest entry form wholly invalid, rather than merely ineffective as to a reliance party  
34 who was misled.  
35



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(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.

(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.

9  
20  
21  
22

Derived from UMVCT Section 10. Note that Section 8 (Application for a Certificate of Title) provides for optional use of an e-mail address.

1 The determination by the office of the first secured party indicated on the certificate of title,  
2 as required under this section, is an administrative determination for purposes of this section and  
3 is not dispositive of priority issues governed by UCC Article 9.  
4

5 This section does not require creation of a written certificate of title, except at the request of  
6 the first secured party or, in some circumstances, the owner; if a written certificate of title is  
7 created it must be delivered to the first secured party, if any. This is designed to make the state a  
8 certificate of title “title holding” state when the option to have a written certificate of title is  
9 exercised. However, while “title holding” may be useful for anti-fraud purposes, it also may  
10 create delays for subsequent purchasers or creditors who need the certificate of title to perfect a  
11 new security interest or otherwise execute a subsequent transaction. Under the U.S. Supreme  
12 Court’s rationale in the *Fink* case, such delays may be legally fatal. *See* Section 28. Therefore  
13 this section allows the owner to request issuance of a written certificate of title to facilitate  
14 subsequent transactions, though the bracketed language would significantly limit this. This  
15 section also should be paired with a means to allow subsequent parties to search for and file  
16 security interest entry forms without otherwise having access to the certificate of title. *See*  
17 Sections 3, and 26-27.  
18  
19

## 20 **SECTION 20. TRANSFER OF LEGAL TITLE TO SECURED PARTY.**

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

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

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

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

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

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

31 (B) the secured party;

1 (C) any other purchaser;  
2 (5) any other information required by Section 8(a); and  
3 (6) either that the secured party does not have possession of the certificate of title  
4 created in the name of the vehicle owner indicated in the files of the office or the secured party is  
5 delivering the certificate of title to the office with the secured party transfer statement.

6 (b) Compliance by the secured party with subsection (a) entitles the secured party to the  
7 creation of a certificate of title showing the secured party or other purchaser as vehicle owner. If  
8 a secured party transfer statement is delivered to the office with the applicable fee and, any  
9 previously created certificate of title, unless the secured party transfer statement is rejected by the  
10 office for a reason set forth in Section 9, the office shall:

- 11 (1) accept the secured party transfer statement;  
12 (2) promptly send notice of the secured party transfer statement to the vehicle owner  
13 indicated in the files of the office;  
14 (3) amend its records to reflect the transfer;  
15 (4) cancel the certificate of title created in the name of the person previously indicated  
16 in the files of the office as the vehicle owner, whether or not the certificate of title has been  
17 delivered to the office;  
18 (5) create a new certificate of title indicating the secured party or other purchaser as  
19 the vehicle owner; and  
20 (6) deliver the new certificate of title pursuant to Section 19.

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

1 party of its duties under that statute, unless creation of the certificate of title otherwise qualifies  
2 as a disposition under that statute.

### 3 **Preliminary Comments**

4 This section is based on UCC Article 9 Section 9-619 and largely follows the language of  
5 that section, for purposes of consistency with the UCC. Like Article 9, this section makes clear  
6 that creation of a certificate of title and transfer of ownership under this section do not constitute  
7 or serve as a substitute for a disposition of collateral under Article 9. Thus the requirements for a  
8 disposition of collateral under Article 9 Part 6 are not affected by this section. The purpose of  
9 this section is to facilitate a disposition of collateral by permitting creation of a certificate of title,  
10 to be executed to the buyer at the disposition sale. This section adapts the provisions of UCC  
11 Section 9-619 to the specifics of certificate of title transactions, to help unify the rules of Article  
12 9 and this [act].

13  
14 This section is not mandatory. It does not require the secured party to obtain a certificate of  
15 title upon repossession or disposition. The obligation to deliver a certificate of title to a  
16 purchaser is provided by Section 14, supplemented by Section 24.

### 17 18 19 **SECTION 21. TRANSFER OF TITLE BY OPERATION OF LAW.**

20 (a) In this section:

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

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

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

27 (B) stating the names and mailing addresses of the vehicle owner indicated in the  
28 files of the office and the transferee, and any other information required by Section 8(a);

1 (C) including documentation sufficient to establish the transferee's interest or  
2 right to acquire the interest of the vehicle owner indicated in the files of the office;

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

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

9 (b) Compliance by the transferee with this section entitles the transferee to creation of a  
10 certificate of title showing the transferee as vehicle. If a transfer-by-law statement is delivered to  
11 the office with the applicable fee, and documentation satisfactory to the office as to the  
12 transferee's interest as or right to acquire the interest of the vehicle owner, unless the transfer-by-  
13 law statement is rejected by the office for a reason set forth in Section 9, the office shall:

14 (1) accept the transfer-by-law statement;

15 (2) promptly send notice of the transfer-by-law statement to all vehicle owners and  
16 secured parties indicated in the files of the office;

17 (3) amend its records to reflect the transfer;

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

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

22 (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;

1           (2) the applicant has provided an affidavit stating facts that indicate the applicant is  
2           entitled to a transfer of ownership, at least 30 days' notice of the application has been sent to all  
3           parties having an interest in the vehicle as indicated in the files of the office, and no objection has  
4           been received by the office; and

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

9           (b) The office may require an applicant under subsection (a) to post a bond or provide an  
10          equivalent source of indemnity or security, in a form prescribed by the office, providing for  
11          indemnity of any owner, purchaser, secured party, or other claimant, for any expense, loss, delay,  
12          or direct damage, including reasonable attorney's fees but not consequential damages, resulting  
13          from creation of a certificate of title under subsection (a). The bond or other source of indemnity  
14          must be in an amount equal to no more than twice the value of the vehicle as determined by the  
15          office.

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

19          (d) In addition to, or in lieu of, the requirements of subsections (b) and (c), the office may  
20          include in the certificate of title created under subsection (a) a legend indicating that the  
21          certificate of title was created without submission of an executed certificate of title. If a claim  
22          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.

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

### 3 Preliminary Comments 4

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

## 10 11 12 SECTION 26. RECEIPT OF SECURITY INTEREST ENTRY FORM.

13 (a) Except as otherwise provided in this section a security interest entry form is effective  
14 upon receipt by the office of a record sufficient under this section and tender of the applicable  
15 fee.

16 (b) A security interest entry form is sufficient if it is a record that includes the name of a  
17 debtor, the name of a secured party or a representative of a secured party, and a description of the  
18 collateral, and has been authorized by the debtor.

19 (c) A security interest entry form is not received if the office rejects the form because:

- 20 (1) the record is not delivered by a means of communication authorized by the office;  
21 (2) an amount equal to or greater than the required filing fee is not tendered;  
22 (3) the record does not contain the name and mailing address of a debtor and a  
23 secured party; or  
24 (4) the record does not contain the correct vehicle identification number.

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

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

#### 12 Preliminary Comments

13  
14 This section is modeled on UCC Section 9-516. It addresses many of the same issues as  
15 Section 9-516, *e.g.*, by specifying that a security interest entry form is effective on receipt by the  
16 appropriate office and payment of the required fee, unless it is properly rejected for specified  
17 reasons and within a specified time. Thus, perfection of the security interest occurs upon receipt  
18 the security interest entry form, even if the security interest is never indicated in the files of the  
19 office or on a written certificate of title, assuming there has been attachment under UCC  
20 Article 9.

21  
22 Errors and omissions in the security interest entry form or certificate of title are governed by  
23 Section 18. The analysis may be different than under Article 9. For example, under this [act] an  
24 error in the secured party's or debtor's name or the description of the vehicle often will be a  
25 harmless error, because it will not affect a search of the files under the vehicle identification  
26 number (VIN) or a transferee of a written certificate of title. Even an error in the VIN may be  
27 harmless under Section 18. Therefore subsection (b) does not require precision with respect to  
28 the debtor's or the secured party's name, or the description of the collateral, for receipt of the  
29 security interest entry form to be effective. The effect of any errors will be determined under  
30 Section 18. In contrast, an error in the VIN is grounds for rejection under subsection (c), but  
31 does not require rejection, *e.g.*, if the office is able to reconcile the error. Even if the office  
32 rejects the form due to an erroneous VIN under subsection (c), the form may be effective for

1 some purposes if the rejection is not timely under subsection (e). In that case the effect of the  
2 erroneous VIN will be determined under Section 18. Thus Section 26 determines the  
3 effectiveness of a security interest for purposes of perfection, while Section 18 determines the  
4 effect of any erroneous information in that form.

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

9  
10 Consistent Article 9 Section 9-311(a), this [act] displaces Article 9 only with respect to the  
11 Article 9 provisions requiring the filing of a financing statement to perfect a security interest, and  
12 the rules governing the effectiveness of a security interest entry form. Other Article 9 rules, such  
13 as those governing attachment (Section 9-203), priority (Article 9 Part 3), and enforcement  
14 (Article 9 Part 6) continue to apply. Moreover, under Article 9 Section 9-311(b), unless  
15 displaced by the specific provisions of this [act], to the extent applicable, the filing provisions of  
16 Article 9 Part 5 may continue to be relevant or to supplement the provisions of this [act]. For  
17 example, *see* Article 9 Sections 9-311(d), 9-313(b), and 9-508. However, this [act] displaces  
18 much of Article 9 Part 5 (Filing Office; Contents and Effectiveness of Financing Statement).

19  
20 Subsection (e) provides a procedure to require the office to notify a secured party if a security  
21 interest entry form is rejected. The time limit for this notice reflects a balancing of the need for  
22 secured parties to receive prompt notice of the need to take remedial action, with the need of the  
23 office for sufficient time to process incoming forms. If timely and proper notice is not sent under  
24 this subsection, the security interest entry form is effective according to its terms even though it  
25 may not have met the requirements of this [act] and was not recorded or indexed in the files of  
26 the office. In this circumstance, if the other requirements of Article 9 are met, the security  
27 interest will be perfected by the security interest entry form. Of course, if the security interest  
28 entry form is significantly defective on its face, *e.g.*, no debtor’s name or a completely erroneous  
29 description of collateral, the error will render it ineffective despite this provision. *See* Section 18.  
30 Priorities between the secured party and those who may be prejudiced by the failure of the office  
31 to file and index the lien entry form, or to indicate it on the certificate of title, are covered by  
32 other sections, *e.g.*, Sections 16-18.

## 33 34 35 **SECTION 27. PERFECTION OF SECURITY INTERESTS.**

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

1 interest in a vehicle may be perfected only by receipt of a security interest entry form under  
2 Section 26.

3 (b) The office may create a certificate of title with the name of a lessor, consignee or  
4 other bailor, or secured party as owner instead of as secured party. A certificate of title naming  
5 such a person as owner perfects any interest of the person as lessor, consignee or other bailor, or  
6 secured party. The office may treat the person as the owner for all purposes.

7 (c) The office may reject a security interest entry form only for a reason set forth in  
8 Section 26(c) and in the manner set forth in Section 26(e). Rejection for any other reason or in  
9 any other manner constitutes receipt of the security interest entry form and the security interest  
10 entry form is effective under Section 26(a) and for purposes of perfection under subsection (a).  
11 A security interest entry form that does not meet the requirements of Section 26(a) is received  
12 and is effective under Section 26(a) and constitutes perfection under subsection (a), unless it is  
13 properly rejected pursuant to Section 26(e). The failure of the office to index a security interest  
14 entry form correctly or to indicate the security interest on the certificate of title does not affect the  
15 receipt or effectiveness of the security interest entry form.

16 (d) A secured party may assign or otherwise transfer its rights as secured party under this  
17 [act], and an otherwise valid transfer is effective whether or not it is reflected in the files of the  
18 office or indicated on the certificate of title. The assignment or transfer vests in the transferee  
19 any rights of the transferor under this [act] and the [Uniform Commercial Code] including, as  
20 applicable, perfection of the security interest as against purchasers from the vehicle owner. Any  
21 such perfection remains effective even if the transfer and transferee are not indicated in the files  
22 of the office or on the certificate of title. However, a purchaser of the vehicle, that obtains a

1 release from the secured party indicated in the files of the office or on the certificate of title, takes  
2 free of an interest not indicated in the files of the office or on the certificate of title.

3 (e) During any period in which collateral subject to this [act] is inventory held for sale or  
4 lease by a person or leased by that person as lessor and that person is in the business of selling or  
5 leasing goods of that kind, this section does not apply to a security interest in that collateral  
6 created by that person.

7 (f) A secured party may perfect a security interest in a vehicle by taking possession of the  
8 vehicle only in the circumstances described in [Uniform Commercial Code] Section 9-316(d).

### 9 Preliminary Comments

10  
11 Derived from UCC Article 9 Sections 9-310(a), 9-516(a) and (b), 9-517, and 9-520(a), (b),  
12 and (c). One purpose is to establish a system for perfection of security interests by filing a  
13 security interest entry form with the office, even if the secured party cannot obtain and surrender  
14 the certificate of title. Similarly, perfection does not require notation on a written certificate of  
15 title, although that does confer an additional measure of protection. *See* Sections 14, 16, and 17.  
16 Perfection by receipt of a security interest entry form under Sections 26 and 27, without notation  
17 on a certificate of title, or even if a certificate of title has not otherwise been created, will create a  
18 certificate of title and be sufficient for perfection. *See* Sections 3, 26, 27. Subsection (a) also  
19 makes clear that perfection under this section is the exclusive means of perfecting a security  
20 interest in a vehicle, except as provided in subsections (e) and (f), which follow UCC Article 9  
21 Sections 9-311(d) and 9-313(b).

22  
23 This section is subject to qualifications and exceptions elsewhere in this [act] and the UCC,  
24 *e.g.*, providing for perfection by filing or possession in limited circumstances (Article 9  
25 Sections 9-311(d), 9-313), or requiring attachment as a prerequisite to perfection (Section 26(a),  
26 Article 9 Sections 9-203, and 9-308(a)). This [act] is subject to general rules in the UCC  
27 governing assignments and the rights of third parties, *e.g.*, Article 9 Part 4, and this is recognized  
28 in subsection (d).

29  
30 Perfection under Sections 26-27, without notation of the security interest on a written  
31 certificate of title, would be effective against lien creditors, but not against a competing party  
32 who relies on the certificate of title, pursuant to Sections 14-19. For example, a competing  
33 purchaser would prevail under Section 16.  
34

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

5  
6 Subsection (d) makes clear that retitling is not necessary upon assignment of a security  
7 interest. This provision is modeled partly on Article 9 Sections 9-310(c) and 9-338 and makes  
8 clear that failure to indicate a transfer of the security interest in the files of the office or on the  
9 certificate of title does not affect the perfection or enforcement of the security interest in favor of  
10 the transferee, except that a purchaser of the vehicle or subsequent transferee of the security  
11 interest is entitled to rely on the certificate of title or files of the office and takes free of an  
12 interest not so indicated if the purchaser or subsequent transferee gives value in detrimental  
13 reliance on the certificate of title or files of the office. *See also* Section 18. For example, if a  
14 purchaser of the vehicle makes payment in full of the secured debt to the secured party indicated  
15 on the certificate of title, that debt would be discharged even if the debt and security interest had  
16 been assigned to another creditor.

17  
18 As noted above, subsections (e) and (f) are patterned on UCC Article 9 Sections 9-311(d) and  
19 9-313(b), to provide consistency with the UCC.

20  
21 A model lien entry form can be provided, consistent with the model forms in Article 9  
22 Section 9-521.

## 23 24 25 **SECTION 28. EFFECTIVE DATE OF SECURITY INTEREST ENTRY.**

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

## 30 **Preliminary Comments**

31 This is modeled on UCC Article 9 Section 9-317(e), which provides a 20 day grace period for  
32 perfection of security interests under Article 9. For certificate of title goods this issue is  
33 governed by the certificate of title law rather than Article 9, pursuant to Article 9  
34 Section 9-311(a)(3). Section 28 covers non-PMSI as well as PMSI transactions, and extends the  
35 grace period to 30 days. The extended grace period is needed in this context due to the possible  
36 need to acquire the certificate of title from its prior holder. Bracketed language would limit this  
37 provision to PMSIs. However, this limitation may be inappropriate, because the need for an

1 extended grace period often arises in a refinance transaction where the prior lender holds the  
2 certificate of title. Absent this provision, the owner may be unable to refinance because of the  
3 inability to obtain the certificate of title from the prior lender within the UCC grace period.  
4 These issues are unique to certificate of title transactions and are not handled well under the more  
5 general rules of the UCC, suggesting a need for this provision.  
6

7 This is inconsistent with the Bankruptcy Code grace period at 11 U.S.C. Section  
8 574(c)(3)(B), as interpreted by the U.S. Supreme Court in *Fidelity Financial Services v. Fink*,  
9 118 S. Ct. 651 (1998). Bankruptcy law will control for purposes of preferential transfer issues in  
10 bankruptcy cases. However, other Bankruptcy Code provisions apparently recognize the primacy  
11 of state law on this issue. *See, e.g.*, Bankruptcy Code Sections 362, 546, and 547(e)(1)(B). Thus  
12 the *Fink* rationale may need further consideration, and in any event some courts have been able to  
13 minimize the resulting problems using other theories. *See, e.g., In re Lockhart*, 2000 Bankr.  
14 LEXIS 1854 (Bankr. D. Ore., Dec. 15, 2000) (77 day delay in perfection was protected from  
15 avoidance as a preference, under the contemporaneous transaction exception at Bankruptcy Code  
16 Section 547(c)(1)). Section 28 provides an appropriate grace period for certificate of title  
17 transactions, consistent with Bankruptcy Code Sections 362, 546, 547(c)(1), and 547(e)(1)(B). It  
18 should provide useful guidance to the courts, in bankruptcy and nonbankruptcy cases.  
19

20 *See also* Section 26(d), requiring the office to maintain a public record of the date each lien  
21 entry form is received. This date may be essential in determining the effective date of perfection  
22 and the priority of the security interest.  
23  
24

## 25 **SECTION 29. UNIFORM SECURITY INTEREST ENTRY FORM.**

26

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

28

## 29 **[SECTION 31. TITLE BRAND]**

### 30 **Preliminary Comments**

31 Left blank to allow a state to insert its title brand statute. *See also* definition of “title brand”  
32 in Section 2, and Sections 8, 9, and 10.]  
33  
34



1       **SECTION 32. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

2       applying and construing this [act], consideration must be given to the need to promote uniformity  
3       of the law with respect to its subject matter among States that enact it.

4  
5       **SECTION 33. SEVERABILITY CLAUSE.** If any provision of this [act] or its application  
6       to any person or circumstance is held invalid, the invalidity does not affect other provisions or  
7       applications of this [act] which can be given effect without the invalid provision or application,  
8       and to this end the provisions of this [act] are severable.

9  
10       **SECTION 34. EFFECTIVE DATE**

11  
12       **SECTION 35. REPEALS**

13  
14       **SECTION 36. SAVINGS CLAUSE**

15  
16       **SECTION 37. TRANSITION CLAUSE**