

FOR
DISCUSSION ONLY

UNIFORM CERTIFICATE OF TITLE ACT

FOR DISCUSSION PURPOSES ONLY

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

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With Reporter's Notes

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ON UNIFORM LAWS

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CERTIFICATE OF TITLE ACT

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1 **CERTIFICATE OF TITLE ACT**

2
3
4 **SECTION 1. SHORT TITLE.** This [Act] may be cited as the Certificate of Title Act.
5

6 **SECTION 2. DEFINITIONS.**

7 (a) In this [Act]:

8 (1) “Buyer in ordinary course of business” has the meaning given in [Uniform
9 Commercial Code Section 1-201(9)].

10 (2) “Certificate of origin” means a record issued or authorized by the manufacturer of
11 a vehicle as a certificate of origin covering that vehicle, that includes a description of the vehicle,
12 any vehicle identification number, and the names of the manufacturer and transferee.

13 (3) “Certificate of title” means a record established by the [appropriate office] that is
14 evidence or an indication of ownership of the vehicle covered by the record and with respect to
15 which a statute provides that a security interest indicated on the record has priority over the rights
16 of a lien creditor with respect to the vehicle.

17 **Reporter’s Note**

18 The definition of “Certificate of title” is similar to those in many state certificate of title (CT)
19 laws, such as 47 Okla. State. § 1102.2. It recognizes the CT as evidence of ownership.
20

21 The remainder of the definition is drawn from UCC Article 9 § 9-102(a)(10), with a few
22 changes. One change is to define CT as a “record,” meaning it can be in either written or
23 electronic form. The definition of “certificate of origin” is similar in this regard.
24

25 The above definition thus requires a CT to have four basic elements: (1) a record, (2) issued
26 by an appropriate office pursuant to a statute, (3) evidencing title to a vehicle, and (4) providing

1 for indication of security interests. *See also* the specific requirements for a CT issued pursuant to
2 this Act, at § 10.
3

4 (3) “Electronic certificate of title” means a certificate of title maintained only as a record
5 or records consisting of information stored in an electronic medium. An electronic certificate of
6 title is issued when the record is established.

7 **Reporter’s Note**

8 “Electronic certificate of title” designates a CT that meets all requirements in the definition of
9 a CT and is in electronic form. *See also* COTA § 10 and § 23. This definition is modeled on the
10 UCC Article 9 definition of “Electronic chattel paper” at § 9-102(a)(31). The general purpose is
11 to create a parallel system for electronic certificates of title, somewhat like that for electronic
12 chattel paper in Article 9, while continuing to recognize the traditional primacy of paper CTs.
13 *See, e.g., infra* §§ 12, 15, 17, 23, and 26; 2(12),
14

15 (4) “Lien” means any voluntary encumbrance on a vehicle.¹

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

19 (6) “Purchase” means taking by a voluntary transaction that creates an interest in
20 property.

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

¹ Do we need provisions regarding assigning the lien? See Article 9 on assignment (§ 9-514?).

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

4 (9) “Title brand” means any designation of material damage that is required by other
5 law to be indicated on the certificate of title. [Or: any designation of material damage as defined
6 in this Act.]

7 (10) “Transfer” means a conveyance of title or an interest in a vehicle.

8 (11) “Vehicle” means any type of motorized, wheeled device in, upon, or by which an
9 individual or property may be lawfully transported on a road or highway or a commercial,
10 recreational, travel, and other trailer. The term does not include:

11 (A) a manufactured home;

12 (B) manufactured housing;

13 (C) an implement of husbandry;

14 (D) a motorized wheel chair or similar motorized device designed for use by an
15 individual having a disability or physical impairment; or

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

18 (12) “Written certificate of title” means a certificate of title issued and maintained
19 in written form. A written certificate of title is issued when the [appropriate office] makes it
20 available to the owner or lien holder.

21 **Reporter’s Note**

22 Two distinct purposes are evident in these definitions: (1) The intention to allow purely
23 electronic CTs, lien entries, etc. (with an option provided at COTA § 23 to allow the owner or

1 lien holder to request a paper CT); and (2) an additional intention to allow some transactions
2 relating to paper CTs to be conducted electronically (*e.g.*, assigning certificates of origin and
3 filing lien entry forms). Thus electronic records may be used to effectuate transactions that do not
4 involve electronic CTs.

5
6 This draft contemplates the filing of written and electronic lien entry forms and the conduct
7 of lien and title searches without any CT, based on the files of the state CT agency (designated
8 herein the “appropriate office”). *See* COTA § 25. The relevant records of this agency are
9 designated “files,” to avoid confusion with the defined term “record.”

10
11 Thus “certificate of title” means any form of “record” meeting the requirements for a CT but
12 not necessarily meaning either a written or electronic CT. An electronic CT, in contrast, indicates
13 a CT being maintained solely in electronic form.

14
15
16 **SECTION 3. LAW GOVERNING VEHICLES COVERED BY CERTIFICATE OF**
17 **TITLE.**

18 (a) This [Act] applies to a vehicle covered by a certificate of title even if there is no other
19 relationship between this jurisdiction and the vehicle or the debtor.

20 (b) A vehicle is covered by a certificate of title when a valid application for the certificate
21 of title and the applicable fee are delivered to the [appropriate office]. A vehicle ceases to be
22 covered by a certificate of title at the earlier of the time the certificate of title ceases to be
23 effective under the law of the issuing jurisdiction² or the time the vehicle subsequently becomes
24 covered by a certificate of title issued by another jurisdiction³.

25 (c) The law of the jurisdiction⁴ under whose certificate of title the vehicle is covered
26 governs all issues relating to or derived from the certificate of title, including all issues governed
27 by this [Act].

²Should this be “state” instead of jurisdiction?

³Should this be “state” instead of jurisdiction?

⁴Should this be “state” instead of jurisdiction?

1 **Reporter's Note**

2 This section is derived from UCC § 9-303. One purpose of this draft is to conform to and
3 avoid conflicts with the UCC, including Article 9.
4

5 The Article 9 language has been revised to specify application only to “vehicles” (as defined
6 at COTA § 2) rather than applying to “goods” as in Article 9 § 9-303. This reflects an intention
7 to limit COTA to vehicles.
8

9 As a result of the definitions at COTA § 2, and the scope provision at § 3, COTA would
10 apply only to a “vehicle” that is “covered” by a “certificate of title” issued or to be issued in this
11 state.
12
13
14

15 **SECTION 4. EXCLUSIONS.**

16 (a) This [Act] does not apply to:

17 (1) A vehicle owned by the United States unless it is covered by a certificate of title
18 under this [Act].

19 (2) [do we need to add the following?] a vehicle owned by this state or a [local
20 government] in this state unless it is covered by a certificate of title under this [Act].

21 **Reporter's Note**

22 An earlier draft of this section was derived from the Uniform Motor Vehicle Certificate of
23 Title and Anti-Theft Act of 1955 (UMVCT) § 2. It provided specific exclusions for construction
24 equipment, farm equipment, golf carts and the like. These were deleted by the Style Committee,
25 as redundant in view of the definition of “vehicle” at COTA § 2(11).
26
27
28

29 **SECTION 5. VEHICLE IDENTIFICATION NUMBER.**

30 Any exclusive vehicle identification number assigned to a vehicle by any manufacturer or the
31 [appropriate office] must be recognized and recorded as the vehicle identification number by the
32 [appropriate office].

1 **Reporter's Note**

2
3 The standards governing vehicle identification numbers, as reflected on certificates of origin and
4 certificates of title, are derived from industry and title administrator practices. A purpose of
5 COTA is to provide legal principles consistent with the broad parameters of these practices.
6

7
8
9 **SECTION 6. CERTIFICATE OF ORIGIN.**

10 A manufacturer of a vehicle may⁵ issue or authorize the issuance of a certificate of origin for
11 each vehicle it manufactures and shall assign the certificate of origin to any transferee. When a
12 dealer, distributor, or other seller transfers a vehicle to a purchaser, the dealer, distributor, or
13 other seller shall assign to the purchaser all certificates of origin covering the vehicle.

14 **Reporter's Note**

15
16 This section allows issuance of a certificate of origin by a third party (*e.g.*, a dealer) upon
17 authorization by the manufacturer.
18

19
20
21 **SECTION 7. INCOMPLETE VEHICLES.**

22 (a) In this section, "final stage manufacturer" means a person to which a manufacturer
23 transfers an incomplete vehicle for completion.

24 (b) If an initial manufacturer of a vehicle transfers an incomplete vehicle to a final stage
25 manufacturer, the initial manufacturer shall assign to the transferee a certificate of origin for the
26 incomplete vehicle.

27 (c) If a final stage manufacturer conducts finishing operations and transfers the
28 completed vehicle to a dealer, distributor, or other purchaser, the final stage manufacturer shall

⁵Should this be "shall"?

1 assign the initial manufacturer's certificate of origin and any certificate of origin issued by the
2 final stage manufacturer to the dealer, distributor, or other purchaser.

3 (d) If a dealer, distributor, or other seller transfers a vehicle completed pursuant to this
4 section to a purchaser, the dealer, distributor, or other seller shall assign to the purchaser all
5 certificates of origin covering the vehicle. A purchaser or other transferee to which a certificate
6 of origin is assigned may require that the certificate of origin be in writing and signed.

7 (e) To obtain a certificate of title in this state for a vehicle that has not been previously
8 covered by a certificate of title in this or any other state, all certificates of origin, reflecting
9 assignment to the purchaser, must be submitted to the [appropriate office] pursuant to Section 8
10 of this [Act].

11 [(f) This section is subject to law other than this [Act] requiring licensing for
12 transactions covered by this section.]⁶

⁶Subsection (f) is bracketed [by the Style Committee] because only some state drafting agencies rely on repeal by implication instead of amendment of the conflicting statutes. USL acts rarely, if ever, have this type of provision. Add a comment that explains what this subsection is intended to do and that it can be deleted in those states that don't rely on repeal by implication. Repeal by implication requires a court to find that this act is an act that is intended to cover the entire subject. I am unsure if it does. The inclusion in this act is a statement that the drafting committee intends that it be a comprehensive act. Rhode Island had a case that had to decide whether the tax code or the retirement code was the comprehensive act regarding the taxation of retirement benefits. My personal view, not necessarily that of the other members of COS, is that provisions encouraging courts to construe statutes by use of implied repealers are as dangerously vague and unpredictable

1 **Reporter's Note**

2 The intent is to accommodate a multiple-step process (*e.g.*, initial manufacturer, next
3 manufacturer — a final stage one, and even another final stage manufacturer, plus a sale by a
4 dealer.
5

6 **SECTION 8. APPLICATION FOR A CERTIFICATE OF TITLE.**

7 (a) The application for a certificate of title must be made to the [appropriate office] and
8 must contain:

9 (1) the buyer's or transferee's name, physical address, and, if different, an address for
10 receiving communications, which may be or include the e-mail address;

11 (2) a description of the vehicle, including (as required by the [appropriate office]):
12 make, model, model year, vehicle identification number, and body type;

13 (3) the seller's or transferor's name, physical address, and, if different, an address for
14 receiving communications, which may be or include the e-mail address;

15 (4) the date of purchase or transfer and any applicable sale price; and

16 (5) any lien on the vehicle.

17 (b) The application must be accompanied by a record of any known existing certificate of
18 title or other known existing record of the vehicle's certificate of title or certificate of origin,
19 assigned to the buyer or other transferee.

20 (c) [Provide model form application and safe harbor language?]

as the use of “notwithstanding any other law”, and, if used, have to be very carefully researched and
drafted. As you might guess, Wisconsin has a statute against the use of implied repeals and drafting
agencies practices requiring the amendment of all conflicting statutes.

1 (d) [AAMVA photo copy procedure.]

2
3 **SECTION 9. ISSUANCE OR REFUSAL TO ISSUE CERTIFICATE OF TITLE.**

4 (a) Upon submission of an application by an applicant satisfying the requirements of
5 Section 8 of this [Act] and payment of all applicable fees, unless there is evidence of fraud, [, or]
6 theft, [or _____,] the [appropriate office], shall issue a certificate of title. The certificate of title
7 must show the assignee as owner of the vehicle and the existence of any lien perfected under this
8 [Act] and be in written or electronic form, at the option of the applicant, subject to subsection
9 (b).

10 (b) If a vehicle for which an application is made under subsection (a) is subject to a lien,
11 the [appropriate office] shall issue a certificate of title in written or electronic form, at the option
12 of the lienholder, and deliver the certificate of title to the first lienholder.

13 (c) The [appropriate office] may revoke or refuse to issue a certificate of title only for a
14 failure to meet the requirements for issuance of a certificate of title under this [Act], and only
15 upon [30] days' prior notice served in person or by registered mail, with return receipt requested,
16 delivered to the owner and any lienholder.

17 **Reporter's Note**

18 Sections 5-9 are derived from 47 Okla. Stat. §§ 1105.2 - 1106.
19
20
21

22 **SECTION 10. CONTENTS OF CERTIFICATE OF TITLE.**

23 (a) A certificate of title issued by the [appropriate office] must, at a minimum, contain:

24 (1) the date issued;

- 1 (2) the name and address of the owner;
- 2 (3) the name and lien holder status of the first lien holder, if any and, if there are
- 3 additional lien holders, an indication to that effect;
- 4 (4) the vehicle identification number;
- 5 (5) a description of the vehicle including make, model year, and body type; and
- 6 (6) the vehicle mileage at the time of the latest transfer of title.

7 (b) [If a vehicle is imported from or previously registered in a jurisdiction that does not

8 require notation of the first lien on a certificate of title, the certificate of title issued in this state

9 must bear a legend indicating that it may be subject to an undisclosed lien or that the vehicle was

10 imported from a jurisdiction that does not require notation of a lien on the certificate of title. If a

11 valid notice of a lien is not received by the [appropriate office] within one year after issuance of

12 the certificate of title, upon application of the owner and submission of any outstanding

13 certificate of title, the [appropriate office], upon request of the applicant, shall reissue a

14 certificate of title that does not include the legend.

15 (c)] A certificate of title shall provide forms for subsequent assignment of the

16 certificate of title by the assignee.

17 (d) This [Act] does not prohibit a lawful repossession of or levy upon the vehicle

18 covered by a certificate of title, but a certificate of title is not subject to gamishment, attachment,

19 execution, or other judicial process.

20 **Reporter's Note**

21 This section is derived from § 9 of the Uniform Motor Vehicle Certificate of Title and Anti-

22 Theft Act of 1955 (UMVCT). Subsection (d) makes clear that judicial process must be executed

23 against the goods, not the CT.

24

1
2 **SECTION 11. TITLE CLEARING PROCEDURE.**
3

4 [To be based on COTA § 18] Is more needed here? Or is § 18 enough?
5
6

7 **SECTION 12. TRANSFER OF TITLE.**

8 (a) If ownership of a vehicle covered by a certificate of title under this [Act] is
9 transferred, the transferor shall assign the certificate of title to the transferee pursuant to the
10 procedures of the [appropriate office] and deliver the certificate of title or an authenticated record
11 of the assignment of the certificate of title to the transferee.

12 (b) Except as otherwise provided in this [Act], a transfer of title is effective between the
13 parties to that transfer, and their assignees, without delivery or assignment of the certificate of
14 title as provided in subsection (a), but the transfer is not effective as to other parties until the
15 transfer meets the requirements of subsection (a).

16 **Reporter's Note**
17

18 Subsection (a) is derived from 47 Okla. Stat. § 1107.A. and is intended to provide a simple
19 baseline rule for transfers of vehicles covered by a CT. Subsection (b) is new and is intended to
20 clarify that vehicles covered by a CT may be transferred without the CT, but such transfers are
21 invalid as to third parties. *See also* COTA §§ 13-15.
22
23
24

25 **SECTION 13. ADVERSE CLAIMS.**

26 A purchaser of a vehicle covered by a certificate of title takes free of any adverse claim or
27 interest not noted on the certificate of title if the purchaser gives value and receives delivery of
28 the vehicle after issuance of the certificate of title and without knowledge of the adverse claim or
29 interest.

1 **Reporter's Note**

2 This is designed to be consistent with UCC Article 9 § 9-337, and to protect purchasers who
3 rely on the CT as well as to conform title issues to the rules for priority of security interests in
4 Article 9. *See also* COTA §§ 15 and 26; Article 2A §§ 2A-314 and 2A-315.
5

6 Together COTA §§ 12 and 13 comprise a package that accommodates electronic and
7 informal transfers while recognizing the primacy of the CT. An electronic transfer under COTA
8 § 12(a) would have priority over an informal transfer under § 12(b), while an indorsement of a
9 written CT under § 13 would have priority over both.
10
11
12

13 **SECTION 14. NOTICE TO [APPROPRIATE OFFICE].**

14 (a) The transferor of a vehicle pursuant to Section 12 may notify the [appropriate office]
15 of the transfer by sending the assigned certificate of title or other authenticated record evidencing
16 the transfer in accordance with procedures established by the [appropriate office]. The record
17 must include the information required in Section 8 of this [Act]. Upon delivery⁷ of the record,
18 the [appropriate office] shall file and index a record of the sale or transfer.

19 (b) To obtain a certificate of title reflecting a transfer, the transferee of the vehicle shall
20 submit to the [appropriate office] the assigned certificate of title or other record evidencing the
21 transfer, together with the information required under Section 8 of this [Act], and any other
22 documentation required by the [appropriate office], including any insurance verification and
23 odometer disclosure required by law other than this [Act], accompanied by the required fee and
24 any tax required by law other than this [Act].

25 (c) Upon receiving an assignment of a certificate of title or other record evidencing the
26 transfer pursuant to subsections (a) or (b), or an authenticated record in accordance with

⁷ Is delivery correct? Receipt? Communication?

1 Section 23 of this [Act], including submission of any required fee and tax in accordance with
2 Section 9 of this [Act], the [appropriate office] shall issue, within a reasonable time, a new
3 certificate of title showing the transferee as owner and noting any liens [and title brand].

4 (d) A dealer licensed by this state [or a charitable organization] may retain the assigned
5 certificate of title or electronic certificate of title in the name of the transferor pending resale or
6 other subsequent transfer and, upon resale or other subsequent transfer, shall assign to the
7 purchaser or other transferee the certificate of title.

8 **Reporter's Note**

9 Derived from 47 Okla. Stat. § 1107. Provides a basic legal framework for submitting title
10 transfers to the appropriate state office. This is intended to operate in conjunction with COTA
11 §§ 8, 9, 12, and (as needed) 23; these provisions are incorporated by reference in this section.
12 *See also* COTA §§ 19-22.
13
14

15 **SECTION 15. TRANSFEE OF VEHICLE COVERED BY CERTIFICATE OF** 16 **TITLE.**

17 (a) Except as otherwise provided in subsection (b), a purchaser or other transferee of a
18 vehicle covered by a certificate of title that takes possession of the vehicle but does not obtain a
19 valid assignment of the certificate of title covering the vehicle takes subject to rights based on the
20 certificate of title.

21 (b) A buyer in ordinary course of business or a lessee in ordinary course of business [,
22 with or without assignment of the certificate of title,] that takes possession or has a right to take
23 possession of a vehicle takes free and clear of any rights of the seller or lessor, including rights
24 based on the certificate of title or a certificate of origin, and takes free and clear of any rights

1 created by the seller or lessor or asserted by a party that entrusted the vehicle to the seller or
2 lessor.

3 **Reporter's Note**

4
5 Subsection (a) states the basic common law rule of assignment, which also runs throughout
6 the UCC: the transferee takes the rights of the transferor. *See also* § 12(b). Subsection (a) also
7 reflects the Article 9 rule that rights under the certificate of title are paramount. *See, e.g.,*
8 Article 9 §§ 9-335, 9-337, 9-338. This represents the base line rule, with subsection (b) the
9 exception. *See also* §§ 12(b), 13, 16, and 26; UCC Article 2A § 2A-304 and Official Comment.

10
11 Subsection (b) recognizes an exception for a buyer in ordinary course of business (BIOCB),
12 based on old Article 2 § 2-403 (the Article 2 entrustment rule) and Article 9 § 9-320. UCC
13 sections 2-403 and 9-320 are consistent. Section 9-320 cuts off security interests created by the
14 seller, and § 2-403 similarly cuts off ownership interests of an entrustor. This draft recognizes
15 and incorporates the combined effect of these UCC provisions in the context of a CT transaction.
16 *See also* UCC §§ 2A-304, 2A-305 (same).

17
18 The result is to allow the BIOCB of a vehicle covered by a CT to take free of claims and
19 security interests created by the seller (*e.g.*, an inventory security interest created by an auto
20 dealer) *and* ownership claims of the entrusting owner (*e.g.*, a consignor) even if the secured party
21 or consignor holds the CT; but it does not allow the BIOCB to take free of a security interest
22 created by the consignor and perfected by CT lien entry, because that is not a case of the security
23 interest created by the seller, unless the consignor and dealer/consignee are the same or are so
24 closely connected as to be treated as the same entity. This reflects long-standing UCC policy that
25 even a BIOCB only takes free of security interests created by his or her seller and ownership
26 claims of an entrustor to that seller, not interests of other or prior parties.

27
28 Thus, COTA § 15 is consistent with the UCC and the case law. However, it does not address
29 a related issue: Can a buyer of a vehicle from a dealer (perhaps a dealer-consignee) be a BIOCB
30 without taking an indorsement or assignment of the CT? The definition of BIOCB is not specific
31 on this, but is broad enough to accommodate this as a common dealer practice. The cases are
32 split. A comment may be appropriate to indicate that this is a common dealer practice, so as to
33 protect a consumer buying from a consignee despite the lack of a CT transfer. Should this be
34 done in the statute? The bracketed language in § 15(b) illustrates one way to address this in the
35 statute. Rights as between the consignor and consignee, such as the priorities of their claims to
36 the sales proceeds, are left to other law.

1 **SECTION 16. EFFECT OF ERRORS OR OMISSIONS ON CERTIFICATE OF**
2 **TITLE.**

3 (a) A certificate of title, application for a certificate of title, certificate of origin, lien entry
4 form, or other record otherwise satisfying the requirements of this [Act] is effective according to
5 its terms, even if it contains errors or omissions.

6 (b) If a certificate of title, application for a certificate of title, certificate of origin, lien
7 entry form, or other record contains errors or omissions that are seriously misleading when it is
8 created, a purchaser of the vehicle takes free of any claim or interest based on the erroneous or
9 omitted information to the extent that the purchaser gives value in reasonable reliance upon the
10 certificate of title.

11 (c) Except as otherwise provided in subsections (d) and (e), a description of the vehicle
12 covered by a certificate of title, application for a certificate of title, certificate of origin, lien entry
13 form, or other record, is sufficient, whether or not the description and vehicle identification
14 number are specific and accurate, if the record reasonably identifies what is described.

15 (d) Except as otherwise provided in subsection (e) a certificate of title, application for a
16 certificate of title, certificate of origin, lien entry form, or other record, that fails to state
17 accurately the name and address of the owner, the name and address of the secured party, or the
18 description of the collateral is not seriously misleading.

19 (e) With respect to a lien entry that is not noted on a written certificate of title, if a search
20 of the files of the [appropriate office] using correct required information, using the [appropriate
21 office's] standard search logic, if any, does not disclose the correct information, the failure to
22 provide the information accurately in the lien entry form or other record is seriously misleading.

1 **Reporter's Note**

2
3 This section is modeled on Article 9 §§ 9-108, 9-337, 9-338, 9-502, and 9-506. The purpose
4 of subsection (a) is to prevent harmless errors from invalidating a transaction, inasmuch as errors
5 in the debtors' or secured party's names or an error in the description of the vehicle normally will
6 not mislead parties to a CT transaction. This issue is different than under Article 9, where an
7 error in the debtor's name can mislead filing searches. Thus, no equivalent to Article 9
8 § 9-506(c) is needed if the lien entry is noted on a CT. For other cases, subsection (e) provides a
9 rule equivalent to § 9-506(c).
10

11 Subsection (b) provides a sanction, short of invalidation, where a seriously misleading error
12 causes damages to a reliance party. *See* subsection (e) to determine if an error is seriously
13 misleading.
14

15 Subsections (c) and (d) provide general rules governing errors or omissions in records
16 pertaining to certificates of title, modeled on Article 9 § 9-506(a) and (b). Except as provided at
17 subsection (e), a minor error in the name of the owner or secured party, or the description of the
18 vehicle, is unlikely to prejudice third parties in a CT transaction. The exception is described at
19 subsection (e). This is necessary where the search depends on the files of the [appropriate office]
20 because an error in the name of the owner or vehicle identification number could result in a
21 record being mis-filed or not discovered in a proper search of the files of the appropriate office.
22
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24
25

26 **SECTION 17. DELIVERY OF CERTIFICATE OF TITLE.**

27 Upon issuance of a certificate of title, the [appropriate office] shall send the certificate of
28 title, or a record evidencing the certificate of title, to the first lien holder, if any, [at the address
29 shown on the lien entry form submitted by that lienholder,] and shall send a record evidencing
30 the certificate of title to the owner of the vehicle at the address shown in the application. The
31 lien holder or owner may elect to have the [appropriate office] issue a certificate of title by
32 sending an authenticated record requesting that issuance[, but the owner may do so only if all
33 liens have been satisfied]. If the vehicle is subject to a lien of record, any certificate of title
34 issued by the [appropriate office] must be delivered to the lien holder.
35

Reporter's Note

Derived from UMVCT § 10. Note that COTA § 8 (Application for a Certificate of Title) and § 26 (regarding lien entry forms) provide for optional use of an email address. *See also* § 23 regarding the procedure for requesting issuance of a CT.

This section does not require issuance of a written CT, except at the request of the lien holder [or owner]; if a written CT is issued it must be delivered to the first lienholder. This is designed to make the state a CT “title holding” state if the option to have a written CT is exercised. However, while this may be useful for anti-fraud purposes, it also may create delays for subsequent purchasers or creditors who need the CT to perfect a new lien in a subsequent transaction. Under the U.S. Supreme Court’s rationale in the *Fink* case, such delays may be legally fatal. *See COTA* § 25. Therefore this provision allows the owner to request issuance of a CT to facilitate subsequent transactions, though the bracketed language would significantly limit this. This section also should be paired with a means to allow subsequent parties to search for and file security interests without having access to the CT. *See COTA* §§ 12-15, and 26.

SECTION 18. TRANSFER OF TITLE BY OPERATION OF LAW.

(a) In this section, “transfer statement” means a record containing the name and address of the transferee and authenticated by the transferee stating that:

(1) the owner of a specified vehicle has defaulted in connection with an obligation secured by a lien on the vehicle and that the transferee is a secured party that is exercising its post-default remedies with respect to the vehicle, and containing documentation satisfactory to the [appropriate office] of a specified vehicle this claim; or

(2) the transferee has acquired or has the right to acquire the rights of the owner of a specified vehicle through merger, probate, termination of joint tenancy, gift, bequest, or divorce, and containing documentation satisfactory to the [appropriate office] in support of this claim; and

(3) therefore, the transferee is entitled to be recognized in a certificate of title as the owner of the vehicle.

(b) A transfer statement meeting the requirements of subsection (a) entitles the transferee to the transfer and issuance of a certificate of title showing the transferee as owner of the vehicle specified in the statement. If a transfer statement meeting the requirements of subsection (a) is presented with the applicable fee to the [appropriate office], the [office] shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; [and]

(3) issue a new certificate of title in the name of the transferee[; and]

[(4) send notice of the transfer statement to the record owner].

(c) A transfer of the certificate of title to a secured party under subsection (b) is not of itself a disposition of collateral [under Uniform Commercial Code Article 9] and does not of itself relieve the secured party of its duties [under that Article].

Reporter's Note

This is derived from Article 9 § 9-619. The purpose is to specify that title transfers may be effectuated to facilitate the purposes stated in subsection (a), but that such transfers do not displace the Article 9 Part 6 disposition requirements. An official comment similar to that for § 9-619 also would be appropriate. There is an equivalent rule in the UMVCT at § 16.

Query: Should guidance be provided as to what constitutes satisfactory documentation? If so, what guidance?

SECTION 19. EXAMINATION OF FILES.

Upon application for a certificate of title, the [appropriate office] shall ensure that any new certificate of title reflects the information required under Section 10 of this [Act], as contained in the files of that office. If the examination of the files indicates a lien, the name and lien holder status of the first lien holder shall be noted on the certificate of title; if there are additional lien holders, there shall be a notation to that effect on the certificate of title.

1 **Reporter's Note**

2 This is derived from UMVCT § 7. *See also* COTA §§ 10(a), 20.

3
4 **SECTION 20. [APPROPRIATE OFFICE] RECORDS.**

5 (a) The [appropriate office] shall accept each application for a certificate of title that is
6 submitted in accordance with Section 8 of this [Act] and [if all liens have been satisfied] shall
7 issue a written or electronic certificate of title, at the option of the owner or lien holder, in
8 accordance with this [Act].

9 (b) The [appropriate office] shall maintain files of the information contained in all
10 certificates of title issued in this state, and all applications for certificates of title, accessible by[:

11 (1)] the vehicle identification number for the vehicle covered by the certificate of
12 title [; and

13 (2) the name or identification number of the owner].

14 (c) Each entry maintained under subsection (b) must also include any liens, title brands,
15 or stolen property reports applicable to the vehicle, including the name and address of any lien
16 holder or claimant to ownership.

17 [(d) Reference requirements of federal law?]

18 (e) The information required in this section [, except _____,] is a public record
19 [accessible pursuant to this Act].

20 **Reporter's Note**

21 Derived from VMVCT § 8. Companion to COTA § 19.

1 **SECTION 21. APPLICATION WITHOUT CERTIFICATE OF TITLE.**

2 (a) The [appropriate office] shall issue a certificate of title upon an application that is not
3 accompanied by submission of an assigned certificate of title or certificate of origin, if:

4 (1) all other requirements of an application under Sections 8, 12, or 18 of this [Act]
5 are met;

6 [(2) an examination of [appropriate office] entries pursuant to Section 19 of this
7 [Act] indicates that all parties with an interest in the vehicle have joined in the application;] and

8 (3) the applicant presents other documentation required by the [appropriate office] to
9 evidence the applicant's ownership and there are no indications of undisclosed or unsatisfied
10 liens, title brands, or adverse claims.

11 (b) The [appropriate office] may require an applicant under subsection (a) to post a bond
12 or provide an equivalent source of indemnity or security, in an amount equal to no more than
13 twice the value of the vehicle as determined by the [appropriate office], in a form prescribed by
14 the [appropriate office], which provides for indemnity of any previous owner, lien holder, or
15 other adverse claimant or any subsequent purchaser, lien holder, or adverse claimant, for any
16 expense, loss, delay, or damage, including reasonable attorney's fees, resulting from the
17 application made under subsection (a) or any resulting issuance of a certificate of title.

18 (c) A bond, indemnity, or other security required under this section must be returned to
19 the applicant if no claim against it has been received by the [appropriate office] within three
20 years after issuance of the certificate of title under subsection (a).

21 (d) In addition to, or in lieu of, the requirements of subsections (b) and (c), the
22 [appropriate office] may include in the certificate of title created under subsection (a) a legend

1 indicating that the certificate of title was issued without submission of an assigned certificate of
2 title. If a claim adverse to the certificate of title has not been received by the [appropriate office]
3 within three years after issuance of the certificate of title, upon a request in a record authenticated
4 by the owner of the vehicle the [appropriate office] shall remove the legend from the certificate
5 of title .

6 **Reporter's Note**

7 Derived from UMVCT § 11. *See also* COTA § 13.
8

9 **SECTION 22. LOST, STOLEN, OR DESTROYED CERTIFICATES OF TITLE;**
10 **DUPLICATE TITLES.**

11 (a) If a certificate of title is lost, stolen, mutilated, or destroyed, or otherwise becomes
12 unavailable or illegible, the first lien holder, as shown in the files of the [appropriate office], may
13 make application for and obtain a duplicate certificate of title by furnishing information
14 satisfactory to the [appropriate office]. If there is no lien of record, the owner may apply for a
15 duplicate certificate of title pursuant to this section.

16 (b) An application for a duplicate certificate of title must be submitted in a record
17 authenticated by the applicant.

18 (c) Each duplicate certificate of title issued by the [appropriate office] shall
19 conspicuously indicate that it is a duplicate.

20 (d) If a person receiving a duplicate certificate of title subsequently obtains possession of
21 the original certificate of title, the person shall promptly surrender the original certificate of title
22 to the [appropriate office] for cancellation.

1 **Reporter's Note**

2 Derived from UMVCT § 13. It may be appropriate to note in a comment that the assignee of
3 a duplicate CT can qualify as a good faith purchaser or BIOCB under UCC Article 2 § 2-403 and
4 Article 9 §§ 9-320, 9-337, and 9-338. The notice required under subsection (c) does not give
5 notice sufficient to bar GFP or BIOCB status.
6
7
8

9 **SECTION 23. ELECTRONIC CERTIFICATE OF ORIGIN OR ELECTRONIC**
10 **CERTIFICATE OF TITLE; REQUEST FOR ISSUANCE OF CERTIFICATE IN**
11 **WRITTEN FORM.**

12 (a) A certificate of origin or certificate of title may be issued and maintained solely as an
13 electronic record, subject to this [Act]. The issuer shall designate the record as an electronic
14 certificate of title or an electronic certificate of origin.

15 (b) An electronic certificate of origin or an electronic certificate of title is maintained
16 solely as an electronic record. The owner or lien holder may communicate an authenticated
17 record to the issuer in substantially the form provided in subsection (c) and request issuance of a
18 written certificate of origin or a written certificate of title[, but only if all liens have been
19 satisfied].

20 (c) A request under subsection (b) by the owner or lien holder for issuance of a written
21 certificate of origin or a written certificate of title must be provided to the issuer in substantially
22 the following form:

1 Request for a Certificate of [Title] [Origin]

2 [Date]

3 To: _____

4 [Addressee]

5 _____

6 [Address]

7 _____

8 From: _____

9 [Owner's name or lien holder]

10 _____

11 [Address]

12 _____

13 Re: [Description of vehicle]; [vehicle identification number]

14 This is to request that a written certificate of [title] [origin] be issued and sent to the
15 [owner or lien holder] at the above address.

16 _____

17 [Authentication of Owner]

18 [end of form]

19 (d) Upon receipt of a request for issuance of a written certificate of title or a written
20 certificate of origin under subsection (c), the issuer shall issue and send to the lien holder, or the
21 owner if there is no recorded lien, the requested written certificate of title or written certificate of
22 origin within [15] business days.

23 [(e) Free-standing odometer disclosure]

24 **Reporter's Note**

25 New. *See also* definition of electronic certificate of title at COTA § 2. The UETA and
26 ESIGN eliminate barriers to electronic signatures in other law.

1 **SECTION 24. RECEIPT OF LIEN ENTRY FORM.**

2 (a) Except as otherwise provided in subsection (b), receipt by the [appropriate office] of a
3 record that constitutes a lien entry form and tender of the applicable fee, or acceptance of the
4 record by [the office], perfects the security interest represented by the lien entry form, upon
5 attachment of the security interest pursuant to [Uniform Commercial Code Article 9].

6 (b) A lien entry form is sufficient if it includes the name of the debtor, the name of a
7 secured party, and a description of the collateral that meets the requirements of Section 16 of this
8 [Act] [or Uniform Commercial Code sections 9-108 and 9-502].

9 (c) Perfection does not occur with respect to a record that the [appropriate office] refuses
10 to accept because:

11 (1) the record is not sent by a method or medium of communication authorized by the
12 [appropriate office];

13 (2) an amount equal to or greater than the applicable filing fee is not tendered; or

14 (3) the record does not contain the name and mailing address of a secured party of
15 record.

16 **Reporter's Note**

17
18 This section is modeled on UCC § 9-516. It addresses the same issues as § 9-516, *e.g.*, by
19 specifying that perfection occurs upon proper submission of the lien entry form, even if the lien
20 is never indicated on the certificate of title. Errors and omissions in the lien entry form or
21 certificate of title are governed by COTA § 16. The bracketed language would incorporate by
22 reference the equivalent provisions of Article 9, for consistency and as an additional safe harbor.
23
24
25

SECTION 25. PERFECTION OF SECURITY INTERESTS.

(a) Except as otherwise provided in this [Act] or [the Uniform Commercial Code], a lien entry form for a vehicle covered by a certificate of title is effective for purposes of perfection upon receipt by the [appropriate office] or its authorized agent pursuant to this [Act].

(b) The [appropriate office] may issue a certificate of title with the name of the lien holder as owner. A certificate of title issued in the name of a lien holder perfects a security interest in the vehicle. The [appropriate office] may treat such a lien holder as the owner for all other purposes.

(c) The [appropriate office] may refuse to accept a record of a lien entry form only for a reason set forth under Section 24 (c) of this [Act]. Refusal to accept a record for any other reason constitutes effective receipt of the lien entry form for purposes of perfection under subsection (a). Acceptance of a record of a lien entry form that does not meet the requirements of this section also constitutes receipt for purposes of perfection under subsection (a). The failure of the [appropriate office] to index a record correctly does not affect the receipt of the record as constituting perfection.

(d) If the [appropriate office] refused to accept the record, the [appropriate office] shall communicate to the person that presented the record the reasons for the refusal, and the date and time the record would have been received had the appropriate office] accepted it; this communication may not be more than [two business days] after the receives the record.

Reporter's Note

Derived from UCC Article 9 §§ 9-310(a), 9-516(a) and (b), 9-517, and 9-520(a), (b), and (c). The purpose is to establish a system for perfection of security interests by filing a record of a lien entry form with the office that issues certificates of title, or its designated agent, even if the secured party cannot obtain and surrender the CT. This is necessary in order to allow perfection

1 under a title-holding system, within the 20 day grace period allowed under Bankruptcy Code
2 § 547(3)(B) and the Supreme Court's *Fink* decision, since the secured party may not be able to
3 obtain the CT from the prior lien holder in time to meet the 20 day deadline.

4
5 This section is subject to qualifications and exceptions elsewhere in COTA and the UCC,
6 e.g., providing for perfection by possession in limited circumstances (Article 9 § 9-313), or
7 requiring attachment as a prerequisite to perfection (COTA § 26).

8
9 This non-CT perfection under COTA §§ 24-25 would be effective against lien creditors, but
10 not against a competing party who relies on the CT, pursuant to COTA §§ 12-17. The latter are
11 modeled partly on Article 9 §§ 9-337 and 9-338 and recognize the primacy of the CT. To be
12 protected against such parties, the CT will have to be obtained and submitted with a lien entry
13 form in the traditional manner.

14
15 A model lien entry form can be provided, consistent with the model forms in Article 9
16 § 9-521.

17
18
19 **SECTION 26. EFFECTIVE DATE OF LIEN ENTRY.** If a record constituting a lien
20 entry form is sent to the [appropriate office] within [30] days after the date the security interest
21 attaches, under Uniform Commercial Code Article 9, the effective date of perfection is the date
22 the security interest attaches.

23 **Reporter's Note**

24 This is modeled on UCC Article 9 § 9-317(e), which provides a 20 day grace period for
25 perfection of security interests under Article 9. For CT goods this issue is governed by the CT
26 law rather than Article 9, pursuant to Article 9 § 9-311(a)(3). COTA § 26 covers non-PMSI as
27 well as PMSI transactions, and extends the grace period to 30 days, because of the time often
28 needed to acquire the CT from its prior holder.

29
30 This is inconsistent with the Bankruptcy Code grace period at 11 U.S.C. § 547(c)(3)(B), as
31 interpreted by the U.S. Supreme Court in *Fidelity Financial Services v. Fink*, 118 S. Ct. 651
32 (1998). The bankruptcy rule will control for purposes of preferential transfer issues in bankruptcy
33 cases. However, Bankruptcy Code provisions recognize the primacy of state law on this issue.
34 See,
35 e.g., Bankruptcy Code §§ 362, 546, and 547(e)(1)(B). It is possible that some day the *Fink*
36 rationale may be revisited, and even if not some courts have been able to minimize its
37 significance using other theories. See, e.g., *In re Lockhart*, 2000 Bankr. LEXIS 1854 (Bankr. D.

Ore., Dec. 15, 2000) (77 day delay in perfection was protected from avoidance as a preference, under the contemporaneous transaction exception at Bankruptcy Code § 547(c)(1)).

SECTION 27. UNIFORM FORM OF LIEN ENTRY.

SECTION 28. DUTIES AND OPERATION OF FILING OFFICE.

[SECTION 29. TITLE BRAND

(a) For purposes of this section, “material damage” means damage sustained by a vehicle as follows:

(1) The damage required repairs having a value, including parts and labor calculated at the repairer’s cost, exceeding three percent of the manufacturer’s suggested retail price of the vehicle or \$500.00, whichever is greater. The replacement of damaged or stolen components excluding the cost of repainting or refinishing those components, if replaced by the installation of new or original manufacturer’s equipment, parts, or accessories including the hood, bumpers, fenders, mechanical parts, instrument panels, moldings, glass, tires, wheels, and electronic instruments, shall be excluded from damage calculation, except that any damage having an accumulated repair or replacement value which exceeds ten percent of the manufacturer’s suggested retail price of the vehicle shall be deemed material damage; or

(2) The damage was to the frame or drive-train of the vehicle; or

(3) The damage occurred in connection with a theft of the entire vehicle; or

(4) The damage was to the suspension of the vehicle requiring repairs other than wheel balancing or alignment.

(b) For purposes of this section, “flood damage” means

1 (c) A certificate of title covering a vehicle (that has not been previously covered by a
2 certificate of title in any state) that suffers material damage or flood damage shall include a title
3 brand on the certificate of title indicating “material damage” or “flood damage.”]

4 **Reporter’s Note**

5 This represents one possible approach to title branding: A definition and requirement in
6 COTA. This language is derived from a disclosure requirement for dealers under 47 Okla. Stat.
7 § 1112.1. The specific trigger for a CT disclosure could be redesigned as desired. Another
8 approach would be to reference “other law” without specifying what that is.