

D R A F T

FOR DISCUSSION ONLY

# UNIFORM CERTIFICATE OF TITLE ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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For February 25-27, 2005 Drafting Committee Meeting

*WITH PREFATORY NOTE AND PRELIMINARY COMMENTS*

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ON UNIFORM STATE LAWS

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December 6, 2004

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# UNIFORM CERTIFICATE OF TITLE ACT

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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 emerging issues. The need for a consistent informational structure and uniform rules dealing

with common title problems has become increasingly apparent.

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

### Electronic and Paper Titles — Enactment Flexibility

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

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

### Study and Drafting History

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

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

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

### Matters of Scope

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

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

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

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

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

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

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

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

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

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

#### Focus on Title Issues

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

its uniform enactment. For example, many issues relating to sales contracts, security interests, and consumer protection are covered by the Uniform Commercial Code or consumer protection laws rather than this Act. The Act does not displace those laws as regards basic contract, tort law, or consumer protection issues.

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



1                                   **UNIFORM CERTIFICATE OF TITLE ACT**

2

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

4 Title Act.

5                   **SECTION 2. APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.**

6 Unless displaced by the particular provisions of this [act], the principles of law and equity

7 supplement its provisions.

8                                   **Preliminary Comments**

9                   This section is consistent with Uniform Commercial Code (UCC) section 1-103(b). [In

10 addition, like the UCC, this [act] should be liberally construed and applied to promote its

11 underlying purposes and policies, which are:

- 12
- 13                   (1) to simplify, clarify, and modernize the law governing certificates of title;
- 14
- 15                   (2) to permit the continued expansion of commercial practices through
- 16 custom, usage, and agreement of the parties; and
- 17
- 18                   (3) to make uniform the law among the various jurisdictions.]
- 19

20                   **SECTION 3. DEFINITIONS.**

21                   (a) In this [act]:

22                   (1) “Buyer” means a person that buys or contracts to buy an ownership

23 interest in a vehicle.

24                   (2) “Buyer in ordinary course of business” means a person that buys goods

25 in good faith, without knowledge that the sale violates the rights of another person in the goods,

26 and in ordinary course from a person, other than a pawnbroker, in the business of selling goods

27 of that kind. A person buys goods in ordinary course if the sale comports with the usual or

1 customary practices in the kind of business in which the seller is engaged or with the seller's own  
2 usual or customary practices. A buyer in ordinary course of business may buy for cash, by  
3 exchange of other property, or on secured or unsecured credit, and may acquire goods under a  
4 pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to  
5 recover the goods from the seller under [Uniform Commercial Code Article 2] may be a buyer in  
6 ordinary course of business. The term does not include a person that acquires goods in a transfer  
7 in bulk or as security for or in total or partial satisfaction of a money debt. A buyer in ordinary  
8 course of business does not lose that status solely because a certificate of title was not executed  
9 to the buyer.

10 (3) "Cancel," with respect to a certificate of title or a certificate of origin,  
11 means to make the certificate ineffective.

12 [(4) "Certificate of origin" means a record created by a manufacturer or  
13 importer as the manufacturer's or importer's proof of identity of a vehicle.]

14 [(4) "Certificate of origin" means a record that is not a certificate of title,  
15 created by the office as proof of identity of a vehicle or by a manufacturer or importer as the  
16 manufacturer's or importer's proof of identity of a vehicle, and designated in the record as a  
17 certificate of origin by the person that created it.]

18 (5) "Certificate of title" means a record, created by the office and  
19 designated a certificate of title by it, that is evidence of ownership of a vehicle.

20 (6) "Create" means to bring a record into existence by making or  
21 authorizing the record.

22 (7) "Deliver" means voluntarily to give possession of a record to a

1 recipient or to transmit it, by any reasonable means, properly addressed to the recipient and with  
2 the cost of delivery provided.

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

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

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

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

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

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

17 (14) “Lessee in ordinary course of business” means a person that leases  
18 goods in good faith, without knowledge that the lease violates the rights of another person, and in  
19 ordinary course of business from a person, other than a pawnbroker, in the business of selling or  
20 leasing goods of that kind. A person leases in ordinary course if the lease to the person comports  
21 with the usual or customary practices in the kind of business in which the lessor is engaged or  
22 with the lessor’s own usual and customary practices. A lessee in ordinary course of business may

1 lease for cash, by exchange of other property, or on secured or unsecured credit, and may acquire  
2 goods or a certificate of title covering goods under a preexisting lease contract. Only a lessee  
3 that takes possession of the goods or has a right to recover the goods from the lessor under  
4 [Uniform Commercial Code Article 2A] may be a lessee in ordinary course of business. A  
5 person that acquires [a leasehold interest in] in bulk or as security for or in total or partial  
6 satisfaction of a money debt is not a lessee in ordinary course of business.

7 (15) “Lien creditor” means:

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

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

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

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

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

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

19 (18) “Owner” means a person having legal title to vehicle.

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

22 (20) “Person” means an individual, corporation, business trust, estate,

1 trust, partnership, limited liability company, association, joint venture, public corporation,  
2 government, or governmental subdivision, agency, or instrumentality, or any other legal or  
3 commercial entity.

4 (21) “Purchase” means to take by sale, lease, mortgage, pledge, consensual  
5 lien, security interest, gift, or any other voluntary transaction that creates an interest in vehicle.

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

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

9 (24) “Secured party” means:

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

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

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

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

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

21 (25) “Secured party of record” means the secured party indicated in the  
22 files of the office or, if more than one, the first indicated in the files of the office.

1                   (26) “Security interest” means an interest in vehicle that secures payment  
2 or performance of an obligation. The term includes any interest of a consignor and a buyer of  
3 accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject  
4 to [Uniform Commercial Code Article 9]. The term does not include the special property interest  
5 of a buyer of vehicle on identification of those vehicle to a contract for sale under [Uniform  
6 Commercial Code Section 2-401], but a buyer may also acquire a security interest by complying  
7 with [Uniform Commercial Code Article 9]. Except as otherwise provided in [Uniform  
8 Commercial Code Section 2-505], the right of a seller or lessor of vehicle under [Uniform  
9 Commercial Code Article 2 or 2A] to retain or acquire possession of the vehicle is not a security  
10 interest, but a seller or lessor may also acquire a security interest by complying with [Uniform  
11 Commercial Code Article 9]. The retention or reservation of title by a seller of vehicle  
12 notwithstanding shipment or delivery to the buyer under [Uniform Commercial Code Section 2-  
13 401] is limited in effect to a reservation of a security interest. Whether a transaction in the form  
14 of a lease creates a security interest is determined pursuant to [Uniform Commercial Code  
15 Section 1-203].

16                   (27) “Security interest statement” means a record, created by a secured  
17 party, that indicates a security interest in a vehicle.

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

- 20                               (A) make or adopt a tangible symbol; or  
21                               (B) attach to or logically associate with the record an electronic  
22 sound, symbol, or process.

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

4 (30) “Termination statement” means a record created by the secured party  
5 under Section 26 or the debtor under Section 22 that:

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

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

9 (31) “Title brand” means a designation of previous damage, use, or  
10 condition that [this [act] or] law other than this [act] requires to be indicated on a certificate of  
11 title or a certificate of origin.

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

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

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

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

21 (B) an implement of husbandry; [or]

22 (C) a wheelchair or similar device designed for use by an

individual having a physical impairment[.][; or]

[(D) manufactured home.]

**[Legislative note:**

*The enacting state should compare this definition of “Vehicle” with existing state law to determine if adjustments are needed to conform to other law.]*

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

(36) “Written certificate of title” means a certificate of title consisting of information that is inscribed on a tangible medium.

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

(1) “Account debtor,” [UCC Section 9-102(a)(3)].

(2) “Agreement,” [UCC Section 1-201(b)(3)].

(3) “Collateral,” [UCC Section 9-102(a)(12)].

(4) “Debtor,” [UCC Section 9-102(a)(28)].

(5) “Good faith,” [UCC Section 2-203(1)(k)].

(6) “Lease,” [UCC Section 2A-103(a)(j)].

(7) “Lessee,” [UCC Section 2A-103(1)(n)].

(8) “Lessor,” [UCC Section 2A-103(a)(p)].

(9) “Manufactured home” [UCC Section 9-102(a)(53)].

(10) “Merchant,” [UCC Section 2-104(1)].

(11) “Notice; Knowledge,” [UCC Section 1-202].

(12) “Representative,” [UCC Section 1-201(b)(33)].

(13) “Sale,” [UCC Section 2-106(1)].



1 (14) “Security agreement,” [UCC Section 9-102(a)(73)].

2 (15) “Seller,” [UCC Section 2-103(1)(o)].

3 (16) “Send,” [UCC Section 1-201(b)(36)].

4 (17) “Value,” [UCC Section 1-204].

5  
6 **Legislative Note:**

7 *If a state has not enacted the 2002 uniform text of Article 1, the references to Article 1*  
8 *section numbers will need to be adjusted to reflect state law.*  
9

10 **Preliminary Comments**  
11

12 Section 3(a)(4) makes clear that a certificate of origin is a temporary record that describes  
13 the vehicle, its manufacturer, and each seller and purchaser during the period between  
14 manufacture of the vehicle and creation of the first certificate of title. A certificate of origin may  
15 be created or authorized by the manufacturer or, in the case of vehicle manufactured outside the  
16 United States, by the importer of the vehicle. The certificate of origin is submitted to the office  
17 that creates the first certificate of title and is to be cancelled at that time. *See also* Sections 6, 7,  
18 9, 13, and 21.  
19

20 The definition of “Certificate of title” at Section 3(a)(5) is similar to those in many state  
21 certificate of title laws, in that it recognizes the certificate of title as evidence of ownership.  
22 Portions of the definition are also derived from UCC Article 9 Section 9-102(a)(10). One change  
23 is to define certificate of title as a “record,” meaning it can be in either paper or electronic form.  
24 The definition of “certificate of origin” is similar in this regard.  
25

26 In addition this definition of certificate of title includes receipt by the office of a security  
27 interest statement pursuant to Section 24. This is needed because it may be necessary to perfect a  
28 security interest pursuant to Section 25(a), by receipt of a security interest statement under  
29 Section 24, before the office has received an application for a certificate of title under Section 9  
30 and 10. Thus, in the absence of a certificate of title created under Sections 9 and 10, a security  
31 interest statement received pursuant to Section 26 will create a certificate of title for purposes of  
32 this [act], including choice of law under Section 4 and perfection under Section 25.  
33

34 The definition requires a certificate of title to have four basic elements: (1) a record; (2)  
35 created or authorized by the appropriate office of this State; (3) evidencing title to vehicle or  
36 indicating perfection of a security interest; and (4) created pursuant to provisions in this [act]  
37 providing (in conjunction with UCC Article 9) for perfection of security interests. *See also* the  
38 requirements for creation of a certificate of title pursuant to this [act], at Sections 9, 10, and 11;  
39 provisions governing security interest statements at Sections 24, 25, and 26; choice of law rules  
40 at Section 4. Pursuant to Section 4(a), for purposes of Section 4 “certificate of title” includes one

1 created pursuant to the law of any jurisdiction.

2  
3 The definition of “certificate of title” is different from UCC Article 9 Section 9-  
4 102(a)(10) in some important ways. The Article 9 definition incorporates by reference the  
5 standards of the applicable certificate of title law. UCOTA is that law, and therefore cannot  
6 directly use the Article 9 incorporation-by-reference approach. Moreover, as noted this [act]  
7 provides for perfection of a security interest on receipt by the office of a security interest  
8 statement, subject to the additional UCC Article 9 requirements, even if the security interest is  
9 not otherwise indicated on a certificate of title or in the office files or the office never receives an  
10 application for a certificate of title. *See* Sections 4, 9, 24, and 25. While this is consistent with  
11 Article 9 Section 9-102(a)(10), this [act] requires a definition that directly encompasses these  
12 functions, while Article 9 can simply tie into this [act] by reference. Therefore, receipt by the  
13 office of a security interest statement pursuant to Section 24 creates an application for a  
14 certificate of title under UCC Article 9 Section 9-303 and triggers application of this [act]  
15 pursuant to UCOTA Section 4, even if there is no other record covering the vehicle in the files of  
16 the office. This is subject to safeguards in Section 4(d) to protect against inappropriate filings.

17  
18 Pursuant to Section 11(d), the certificate of title must provide for reassignment of title by  
19 execution of the certificate of title, or a related form, including dealer reassignments and secured  
20 powers of attorney, *e.g.*, by execution of a form that is part of or related to the certificate of title.  
21 *See* the definition of “execute.”

22  
23 Section 3(a)(6) defines what it means to “create” a certificate of title. This definition  
24 relates to other definitions and provisions of this [act]. *See, e.g.*, the definitions of “Electronic  
25 certificate of title” and “Written certificate of title,” Section (3)(a)(10) and (34); Section 10  
26 (obligation of the office to create a certificate of title). As noted, an application for a certificate  
27 of title can be created by receipt in the office of a security interest statement. *See* Sections 4, 24,  
28 and 25. A certificate of title can be created by the office making a file pursuant to Sections 9, 10,  
29 and 11, or by issuance of a written certificate of title pursuant to those sections.

30  
31 “Deliver” as defined at Section 3(a)(7) means a transfer of possession of a record; as used  
32 in this context the meaning and context of the term “transfer” are different from the definition of  
33 “Transfer” at Section 3(a)(31), which refers to conveyance of an interest in vehicle. Payment by  
34 the transferee for the cost of delivery constitutes “the cost of delivery provided” and meets the  
35 definition of deliver. In the case of an electronic record, deliver means the transmission by  
36 electronic means to the electronic mail address of the recipient.

37  
38 Under Section 3(a)(10), “Electronic certificate of title” designates a certificate of title that  
39 meets all requirements in the definition of a certificate of title and is only in electronic form. *See*  
40 *also* Sections 11 and 14. This definition is modeled somewhat on the UCC Article 9 definition  
41 of “Electronic chattel paper” at Section 9-102(a)(31). The general purpose is to create a parallel  
42 system for electronic certificates of title, somewhat like that for electronic chattel paper in Article  
43 9, while continuing to recognize the traditional primacy of a written certificate of title if one

1 exists. *See* Sections 16, 18, 19, 21-23; and the definition at Section 3(a)(34).

2  
3 The definition of “execute” at Section 3(a)(11) applies only when used to denote  
4 execution of a certificate of title or certificate of origin.

5  
6 The definition of “lien creditor” at Section 3(a)(14) is taken largely from UCC Article 9  
7 Section 9-102(a)(52), for purposes of consistency with the UCC.

8  
9 The definition of “Manufacturer” at Section 3(a)(15) includes a later-state manufacturer,  
10 *e.g.*, a manufacturer that completes vehicles by installing or modifying vehicle body on a chassis  
11 manufactured by another manufacturer.

12  
13 The definition of “Owner” at Section 3(a)(17) means a person with ownership of an  
14 interest in the legal title to vehicle. It does not include an equitable or beneficial ownership  
15 interest.

16  
17 The definition of “Person” at Section 3(a)(19) 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 3(a)(20) is adapted from UCC Section 1-  
22 201(b)(29), for purposes of consistency; *see also* Section 1-201(32) of old Article 1. Some parts  
23 of the UCC definition are directed at purchases of instruments or investment securities or the  
24 like, and are not applicable to vehicles, *e.g.*, the words “discount,” “negotiation,” and “issue or  
25 reissue.” The UCC definition is included in this [act] as applicable, for purposes of consistency  
26 with the UCC. The definition of “Purchaser” at Section 3(a)(21) is similarly adapted from UCC  
27 Article 1 Section 1-201(b)(30), for purposes of consistency with the UCC. The definitions of  
28 “Secured party” and “Security interest” at Sections 3(a)(23) and (25) are also similar to those in  
29 UCC Article 9.

30  
31 The terms “Transfer” and “Transferee” at Section 3(a)(31) and (32) denote any  
32 conveyance of an interest, whether voluntary or by operation of law, in contrast to a “purchase,”  
33 which denotes a voluntary conveyance. Again this distinction is drawn from the UCC.

34  
35 Two other fundamental purposes are evident in the definitions: (1) Allowing purely  
36 electronic certificates of title and origin and related documentation (with a tiered option provided  
37 at Sections 9, 10, 11, and 15 to allow certain persons to request a paper certificate); and (2)  
38 allowing some transactions relating to written certificates of title to be conducted electronically  
39 (*e.g.*, assigning certificates of origin, and perfection of security interests under Sections 24 and  
40 25). Thus electronic records may be used to effectuate electronic transactions, and also  
41 transactions that involve written certificates of title.

42  
43 This [act] contemplates the filing of paper and electronic security interest statements to

perfect security interests (Sections 24 and 25), and paper and electronic documentation of other records, including security interest and title searches, without or without a paper certificate of title, based on the discretion, budget, and files of the state certificate of title agency (designated herein the office). *See* Sections 4, 14 and 22-23. 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 does not denote either a written or electronic certificate of title. In addition, receipt by the office of a security interest statement is an application for a CT, pursuant to Sections 4 and 24. 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 solely in written form. Note that, unless stated otherwise (as in Section 4(a)), “certificate of title” means one created in this state.

The definition of “Sign” at Section 3(a)(27) is derived from the definition of “signed” in UCC Article 1 Section 1-201(b)(37) and the definition of “electronic signature” in the Uniform Electronic Transaction Act (UETA) Section 3(8). It is intended to encompass both electronic and written signatures. The definition of “termination statement” at Section 3(a)(29) relates to the termination of a security interest statement under Section 26. In addition, the debtor can terminate a security interest statement in limited circumstances under Section 22. *See also* Sections 24 and 25.

“Specialized mobile equipment,” as that term is used in Section 3(a)(33)(A), includes off-road motorized vehicles whose use of the roadway is only incidental to their off-road purpose, *i.e.*, mobile equipment not designed primarily for the transportation of individuals or property upon a road or highway and only incidentally operated or moved over a road or highway, including: motorized vehicles designed exclusively for off-road use; ditch digging apparatus; well-boring apparatus; construction equipment; road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carry-alls and scrapers, power shovels, and drag lines; self-propelled cranes; and earth-moving equipment. The term does not include a house trailer (which is not vehicle), or dump trucks, truck-mounted transit mixers, truck-mounted cranes and shovels, or other mobile equipment mounted on vehicles designed for transport of individuals or property on a roadway. Vehicles designed for transport on a roadway are not specialized mobile equipment, and are therefore vehicles covered by this [act].

Although technically not a definition, “Location of debtor” is essentially defined in Article 9 at Section 9-307. For purposes of this [act], the location of the debtor is determined under Section 9-307.

#### **SECTION 4. LAW GOVERNING VEHICLES COVERED BY CERTIFICATE**

1     **OF TITLE OR CERTIFICATE OF ORIGIN.**

2             (a) In this section and in section 16(c), “certificate of title” includes a certificate of  
3 title lawfully created by a government agency of any jurisdiction.

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

8             (c) A vehicle becomes covered by a certificate of title when an application for a  
9 certificate of title and the fee are received by the office in accordance with this [act], or when an  
10 application for a certificate of title and the fee are received in another jurisdiction pursuant to the  
11 certificate of title law of that jurisdiction.

12            (d) A vehicle ceases to be covered by a certificate of title at the earlier of the time  
13 the certificate of title ceases to be effective under the law pursuant to which it was created, or the  
14 time the vehicle subsequently becomes covered by another certificate of title, other than a  
15 certificate of title initiated only by a security interest statement, created in any state.

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

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

21                   (2) in the absence of an agreement effective under subsection (e) (1), the  
22 rights and obligations of the parties are determined by the law that would be selected by

1 application of this state’s conflict-of-laws principles.

## 2 Preliminary Comments

3  
4 Subsections (b) and (c) are derived from UCC Section 9-303. One purpose of this [act] is  
5 to conform to and avoid conflicts with the UCC.

6  
7 The language of Section 9-303 has been revised in subsections (b) and (c) to limit the  
8 application of this [act] to “vehicles” (as defined in Section 3(a)(33)) rather than applying to  
9 “vehicle” as in Article 9 Section 9-303. This reflects the limitation of this [act] to vehicles. *See*,  
10 *e.g.*, Section 3(a)(4), 3(a)(5), 3(a)(15), 3(a)(33), and Sections 9-11, 15. Other deviations from  
11 Section 9-303 were also necessary, but the language of subsections (b) and (c) tracks  
12 Section 9-303 as closely as possible.

13  
14 As a result of the definitions at Section 3, and the scope and choice of law provisions at  
15 Section 4, this [act] would apply to a “vehicle” that is “covered” by a “certificate of title”  
16 “created” in this state. If the vehicle is not covered by a certificate of title, an agreement  
17 otherwise effective under subsection (e)(1) is not effective to the extent that application of the  
18 law of the chosen jurisdiction would be contrary to a fundamental policy of the jurisdiction  
19 whose law would govern under subsection (e)(2). In the absence of an agreement that is effective  
20 under subsection (e)(1), if a vehicle is not covered by a certificate of title and a certificate of  
21 origin has not been created for the vehicle, the rights and obligations of the parties with an  
22 interest in the vehicle are determined by the law that would be selected by application of this  
23 state’s conflict-of-laws principles.

24  
25 Vehicle becomes covered by a certificate of title when an application or a security interest  
26 statement and any required fees are delivered to the office in accordance with the requirements of  
27 this [act]. *See* Sections 9, 10, 24, and 25. At that time this [act] would apply to all issues relating  
28 to the certificate of title or otherwise governed by this [act]. *See* Sections 4, 24, 25, and 26  
29 regarding the effect and termination of a security interest statement. Section 4 provides choice of  
30 law rules to establish the applicability of Sections 9, 10, 24, 25, and 26.

31  
32 Receipt by the office of a security interest statement constitutes an application for a  
33 certificate of title under subsection (d), and under subsection (c) the vehicle becomes covered by  
34 a certificate of title at that time, making the [act] applicable under subsection (b) and (if all other  
35 requirements are met) perfecting the security interest under Sections 24 and 25. If the debtor  
36 subsequently obtains a certificate of title in another state, this earlier security interest will remain  
37 perfected under this [act] and Article 9 Section 9-316(d), subject to Section 9-316(e), even if a  
38 certificate of title was never created in this state. The priority of the security interest would be  
39 determined under Article 9. *See, e.g.*, Sections 9-322, 9-337.

40  
41 Subsections (f) through (h) are derived from revised UCC Article 1 Section 1-301(c)  
42 through (f) (2002 uniform text). They provide a back-up rule to subsections (b) and (c),

1 applicable if there is no certificate of title (or application for a certificate of title under subsection  
2 (d)) to trigger subsections (b) and (c). Thus, *e.g.*, subsections (f) through (h) provide for general  
3 choice of law rules to apply to certificates of origin, which are not created by a state, prior to  
4 creation of or application for a certificate of title.

5  
6 Some states have enacted nonuniform versions of UCC Article 1 Section 1-301(d), (e)  
7 and (f). Those states will need to amend Section 4(f) through (h) to conform with the state's  
8 nonuniform UCC provisions.

9  
10 **Definitional Cross Reference:**

11  
12 "Certificate of title." Section 3(a)(5).

13  
14 "Security Interest Statement." Section 3(a)(27).

15  
16 **SECTION 5. EXCLUSIONS.** Unless a vehicle is covered by a certificate of title, this  
17 [act] does not apply to vehicle owned by the United States, the government of a country other  
18 than the United States, a federally recognized Indian tribe, a state, or a [local government] of a  
19 state.

20 **Preliminary Comments**

21  
22 This section is derived from the Uniform Motor Vehicle Certificate of Title and Anti-  
23 Theft Act of 1955 (UMVCT) Section 2. UMVCT Section 2 additionally provides specific  
24 exclusions for construction equipment, farm equipment, golf carts, boat trailers, and the like.  
25 These have been removed from UCOTA Section 5, as redundant in view of the definition of  
26 "vehicle" at Section 3(a)(32).

27  
28 **SECTION 6. VEHICLE IDENTIFICATION NUMBER, MAKE, AND MODEL**  
29 **YEAR.**

30 (a) For each vehicle covered by a certificate of title, the office must indicate in its  
31 files the vehicle identification number, if any, assigned by its chassis manufacturer or importer.  
32 If none, the office may assign and indicate in its files a vehicle identification number.

1 (b) If vehicle is completed by a manufacturer using a chassis produced by another  
2 manufacturer, the make of the manufacturer that completes the vehicle must be used to describe  
3 the completed vehicle in the files of the office.

4 (c) The model year of a complete new vehicle is the model year of [chassis  
5 manufacture] [completion], which must be the only model year indicated in the files of the office.

#### 6 **Preliminary Comments**

7  
8 The standards governing vehicle identification numbers, as reflected on certificates of  
9 origin and certificates of title, are derived from industry and title administrator practices.  
10 Departure from these practices could be a basis for objection by a purchaser or the office under  
11 law other than this [act]. *See, e.g.*, revised Article 1 Section 1-303 (2002 uniform text) (old  
12 Article 1 Section 1-205). A purpose of this [act] is to provide legal principles consistent with  
13 these practices.  
14

### 15 **SECTION 7. EXECUTION OF CERTIFICATE OF ORIGIN.**

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

21 (b) Unless a certificate of title is delivered to the buyer, if a written certificate of  
22 origin is required under subsection (a) or Section 22 to obtain a certificate of title, a buyer may  
23 require that the buyer's transferor execute to the buyer a written certificate of origin.

#### 24 **Preliminary Comments**

25  
26 This section allows creation of a certificate of origin by a third party (*e.g.*, a dealer or  
27 importer) upon authorization by the manufacturer or importer. It also requires each transferor to  
28 execute any outstanding certificates of origin to the transferee.



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

3  
4       “Later stage manufacturer” is a term sometimes used to describe a purchaser to which  
5 ownership of vehicle is transferred for further manufacture, including fabrication, assembly, or  
6 other completion. A later stage manufacturer is within the definition of “manufacturer” at  
7 Section 3(a)(15), *e.g.*, as that term is used in Section 7(a).

8  
9       Under this section, if a manufacturer or importer of a new vehicle sells vehicle to a later  
10 stage manufacturer, the selling manufacturer or importer is required to execute to the later stage  
11 manufacturer any known certificate of origin covering the vehicle or required to be created by  
12 agreement or under other law. If a later stage manufacturer transfers ownership of the vehicle to  
13 another later stage manufacturer or to a dealer, distributor, or other buyer, the seller is similarly  
14 required to execute all known certificates of origin to the buyer.

15  
16       And if a dealer, distributor, or other buyer transfers ownership of a new vehicle after  
17 manufacture by a later stage manufacturer, the seller is again required execute to the next buyer  
18 all known certificates of origin covering the vehicle. Thus, Section 7 accommodates a multiple-  
19 step manufacturing and sales process (*e.g.*, transfers between an initial manufacturer and possibly  
20 multiple subsequent manufacturers, dealers, etc., plus a sale by a dealer to the end-user)  
21 involving certificates of origin.

22  
23       As an alternative, the buyer may apply for a certificate of title under Section 22.

24  
25       **Definitional Cross Reference:**

26  
27       “Buyer.” Section 3(a)(1).

28  
29       “Create.” Section 3(a)(6).

30  
31       “Delivery.” Section 3(a)(7).

32  
33       “Execute.” Section 3(a)(11).

34  
35       “Sign.” Section 3(a)(26).

36  
37       “Transfer.” Section 3(a)(32).

38  
39       “Transferee.” Section 3(a)(33).

40  
41       **SECTION 8. CANCELLATION OF CERTIFICATE OF ORIGIN.**

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

4 (b) If an electronic certificate of origin is created to replace a written certificate of  
5 origin, the written certificate of title must be cancelled. The cancellation must be noted on the  
6 face of the written certificate of origin.

#### 7 **Preliminary Comments**

8  
9 *See also* Section 15(C) (cancellation of certificate of title), for a parallel rule governing  
10 certificates of title. If there is a written certificate of origin, and a replacement electronic  
11 certificate of origin is to be created, the written certificate of origin must be canceled. *See*  
12 Section 3(a)(9) (electronic certificate of origin must exist solely in electronic form). There is a  
13 similar rule for certificates of title. *See* Section 3(a)(10). However, unlike a certificate of title,  
14 there can be more than one certificate of origin covering a vehicle. *See* Section 7. *Cf.*  
15 Section 4(d), *we* (certificates of title).  
16

### 17 **SECTION 9. APPLICATION FOR CERTIFICATE OF TITLE.**

18 (a) Subject to Section 20, an application for a certificate of title must be signed by  
19 the owner and must contain:

20 (1) the owner's name and physical address and, if different, an address for  
21 receiving communications by regular mail;

22 (2) the vehicle identification number, if any, assigned by the vehicle's  
23 chassis manufacturer or importer;

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

26 (4) an indication of all security interests in the vehicle which are known to

1 the applicant;

2 (5) any title brand known to the applicant and, if known, the jurisdiction  
3 that created the title brand;

4 (6) a signed record disclosing the vehicle's odometer reading, if required  
5 under law other than this [act] to be provided by the transferor upon transfer of ownership of the  
6 vehicle;

7 (7) if the application is made in connection with a transfer of ownership,  
8 the transferor's and transferee's names, physical addresses and, if different, addresses for  
9 receiving communications by regular mail, the date of the transfer, and the sales price if any, and  
10 the date of the transfer; and

11 (8) if the application includes a direction to terminate a security interest  
12 statement, the secured party's name and address for receiving communications.

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

16 (c) Except as otherwise provided in Section 21 or 22, if an application for a  
17 certificate of title includes an indication of a transfer of ownership or a direction to terminate a  
18 security interest statement, the application must be accompanied by all existing certificates of  
19 origin and any certificate of title covering the vehicle, created in any jurisdiction, which have  
20 been executed to the owner or other transferee by the transferor or are known to the applicant.

21 [Except as otherwise provided in Section 22, if] [if] an application includes a direction to  
22 terminate a security interest statement, the application must be accompanied by a termination

1 statement.

2 (d) Except as otherwise provided in Section 23, if an application for a certificate  
3 of title does not include an indication of a transfer of ownership or a direction to terminate a  
4 security interest statement, the application must be accompanied by all existing certificates of  
5 origin and any certificate of title covering the vehicle, created in any jurisdiction, known to the  
6 applicant and evidencing the applicant as owner of the vehicle.

7 (e) If there is no existing certificate of origin or certificate of title covering the  
8 vehicle, created in any jurisdiction and known to the applicant, an application for a certificate of  
9 title must be accompanied by all existing records and other information of the vehicle's  
10 ownership known to the applicant. Information submitted under this subsection is part of the  
11 application for the certificate of title and must be indicated in the files of the office.

12 (f) A power of attorney [, including a simple power of attorney,] may be used to  
13 meet the requirements of this section, unless prohibited by law other than this [act].

14 (g) The office may require that an application for a certificate of title or a security  
15 interest statement be accompanied by any tax or fee payable by the applicant under the law of this  
16 state in connection with the acquisition or use of a vehicle, or evidence of payment of that tax or  
17 fee.

## 18 Preliminary Comments

19  
20 The applicant's name need not be precise or determined in accordance with UCC  
21 Article 9 Section 9-503. The effect of errors or omissions is governed by Section 20.

22  
23 This section provides the basic requirements for an application for a certificate of title. It  
24 is supplemented by Sections 16, 21, 22, and 23, which provide separate requirements for certain  
25 specified circumstances, *e.g.*, an application under Section 23 for a replacement certificate of title  
26 when the previous certificate of title has been lost, stolen, or destroyed.

1           The office may request additional information not specified in this section, such as the  
2 sales price, for taxation or other purposes, but the accuracy or lack of this additional information  
3 does not affect the validity of the application for a certificate of title. *See also* Section 10.  
4

5           The information required under subsection (a)(3) is to be determined by the office. The  
6 office can vary this requirement by requiring more information of this type, or less, as  
7 appropriate in that jurisdiction. Subsection (a)(3) states the customary requirement in many  
8 jurisdictions.  
9

10          The purpose of subsection (a)(6) is to recognize the requirements of the Motor Vehicle  
11 Information and Cost Savings Act, 15 U.S.C. Section 1988, as implemented by the National  
12 Highway Traffic Safety Administration (NHTSA) at 49 C.F.R. Part 580 (Odometer Disclosure  
13 Requirements). This federal odometer mileage disclosure law requires certain vehicle mileage  
14 disclosures to be made upon transfer of title to vehicle. *See, e.g.*, 49 C.F.R. Section 580.5. The  
15 disclosures must be made “in writing” on the certificate of title or other document being used to  
16 transfer ownership. *Id.*  
17

18          It is not necessary for this [act] to restate or specifically incorporate these federal law  
19 requirements. However, this general reference to those requirements may be helpful in alerting  
20 interested parties to the federal requirements. That is the purpose of subsection (a)(6).  
21

22          There has been some uncertainty about the impact of the federal requirement that the  
23 disclosures be “in writing,” *see, e.g.*, 49 C.F.R. Section 580.5(c), particularly as regards  
24 electronic certificates of title. This has now been clarified somewhat. The NHTSA has indicated  
25 that an electronic disclosure containing the proper information will satisfy the federal written  
26 disclosure requirement at 49 C.F.R. Section 580.7 for a lessee-to-lessor transfer. This  
27 requirement is similar but not identical to the written disclosure requirement for other transfers,  
28 *e.g.*, at 49 C.F.R. Section 580.5, and therefore provides some indication that an electronic  
29 disclosure satisfies the federal requirement for a “writing.” *See* letter to Edwin E. Huddleson, II,  
30 General Counsel, American Automobile Leasing Association, from Jacqueline Glassman, Chief  
31 Counsel, National Highway Traffic Safety Administration (April 25, 2003). This is consistent  
32 with the federal Electronic Signatures in Global and National Commerce Act (ESIGN), Pub. L.  
33 106-229 (June 30, 2000), codified at 15 U.S.C. § 7001 *et seq.* Further clarification is being  
34 considered.  
35

36          Thus it is possible that transactions involving electronic certificates of title can be  
37 executed entirely by electronic means, including the federal odometer mileage disclosures  
38 required under 49 C.F.R. Part 580.  
39

40           **SECTION 10. CREATION AND CANCELLATION OF CERTIFICATE OF**  
41 **TITLE.**

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

4 (b) The office may create a written certificate of title or, if authorized to do so, an  
5 electronic certificate of title, at the option of the secured party of record or, if no security interest  
6 is indicated in the files of the office, at the option of any owner of record. If no request is made  
7 by an owner of record or secured party, if authorized to do so, the office may at its option create a  
8 written certificate of title or an electronic certificate of title.

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

10 (1) the application does not comply with Section 9;

11 (2) there is a reasonable basis for concluding that the application is  
12 fraudulent or would facilitate a fraudulent or illegal act; or

13 (3) the application does not comply with law other than this [act].

14 (d) If the office has created a certificate of title, it may cancel the certificate of title  
15 only if it could have rejected the application under subsection (c), and only after providing an  
16 opportunity for a hearing. At a hearing under this subsection, the applicant and any other  
17 interested party may present evidence in support of the application. The office shall provide at  
18 least [30] days' notice of the opportunity for a hearing, served [in person or sent by regular mail  
19 to] [as required for service of process in a civil action on] the applicant, the owner of record, and  
20 all secured parties indicated in the files of the office.

## 21 **Preliminary Comments**

22  
23 *See also* the standards for delivery of a certificate of title at Section 15. The

determination of the secured party of record, defined at Section 3(a)(24) as the first secured party indicated in the files of the office, *e.g.*, for purposes of subsection (b), is an administrative matter for purposes of this [act] and is not determinative of priority issues for purposes of UCC Article 9. The effect of a security interest statement is governed by Sections 4, 24, and 25. Rejection of an application affects only the applicant's ownership and does not alter the receipt or effect of a security interest statement under Section 4, 24, or 25. Cancellation of a certificate of title, or rejection of an application for a certificate of title, does not alter the receipt or effect of a security interest statement under Section 4, 24, or 25 or [Uniform Commercial Code 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 9, 21, 22, or 23. Other provisions, for example Sections 16-20, provide substantive standards to govern the resolution of competing claims, *e.g.*, in contract disputes, but these standards are not intended to be addressed or resolved by the office in the application process. The office should not be liable for violation of these substantive standards in creating or refusing to create a certificate of title, as long as it acted in good faith; however, these standards will be applicable in the event that there is judicial review of a decision of the office to create or refuse to create a certificate of title.

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

## **SECTION 11. CONTENTS OF CERTIFICATE OF TITLE.**

(a) Except as otherwise provided in Section 20, a certificate of title must contain:

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

(2) except as otherwise provided in Section 25(b), the name and address of any secured party of record and an indication of whether there are additional security interests disclosed under Section 9, indicated in a security interest statement effective under Section 24, or otherwise indicated in the files of the office or on a certificate of title created in any jurisdiction and submitted to the office;

(3) all title brands, including brands previously indicated on a certificate of

1 title or certificate of origin created in any jurisdiction that are known to the office; and

2 (4) the information required for an application pursuant to Section 9(a)(1)  
3 through (5) and the vehicle odometer reading required under Section (9)(a)(6).

4 (b) An indication on a certificate of title of a title brand may consist of an  
5 abbreviation, but not a symbol, and must identify the jurisdiction whose certificate of title  
6 indicated the title brand. If the meaning of a title brand is not easily ascertainable or cannot be  
7 accommodated on the certificate of title, the certificate of title may state: “Previously branded in  
8 [the jurisdiction on whose certificate of title the title brand was previously indicated].”

9 (c) If vehicle was previously registered in a jurisdiction outside the United States,  
10 the office shall indicate on the certificate of title that the vehicle was registered in that  
11 jurisdiction.

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

#### 14 Preliminary Comments

15  
16 “Title brand” is defined in Section 3(a)(30). *See also* Section 9, requiring any known title  
17 brand to be included in the application for a certificate of title. Any title brand indicated on the  
18 certificate of title should be described using plain language or common abbreviations, not codes  
19 or symbols, so as to be readily understandable in any state. Section 29 is reserved for a state that  
20 wants to incorporate its title brand requirements in this [act].

21  
22 In common usage, a “title brand” is a notation on the face of a certificate of title that  
23 provides notice to subsequent purchasers of the damage, condition, or prior use of the vehicle.  
24 The U.S. titling jurisdictions use a wide variety of terms or symbols to brand titles. This [act]  
25 does not define the specific types of damage or condition that typically give rise to title branding  
26 requirements under state law. Previous efforts to establish standard definitions for terms such as  
27 “salvage vehicle,” “flood vehicle,” or “rebuilt salvage vehicle” have been contentious.

28  
29 Unless the enacting state uses Section 29, other law of this or another state will determine  
30 if a title brand is required. If a title brand is required, this [act] requires the use of words or



1 abbreviations rather than symbols to denote the title brand. Once a title brand is required, this  
2 [act] requires that the title brand be indicated on the face of the certificate of title and all  
3 subsequent certificates of title created for the vehicle by the office. Additionally, once a title  
4 brand is required, the title brand of one state must be “carried forward” on a certificate of title  
5 subsequently issued by any other state with respect to the vehicle.  
6

## 7 **SECTION 12. CERTIFICATE OF TITLE AND CERTIFICATE OF ORIGIN**

8 **NOT SUBJECT TO JUDICIAL PROCESS.** A certificate of title or a certificate of origin does  
9 not by itself provide a right or a means to obtain possession of the vehicle and is not subject to  
10 garnishment, attachment, levy, replevin, or other judicial process against property. However, this  
11 [act] does not prohibit enforcement of a security interest in, levy on, or foreclosure of a statutory  
12 or common-law lien on, a vehicle, under law other than this [act]. The absence of an indication  
13 of a statutory or common-law lien on a certificate of title does not invalidate the lien.

### 14 **Preliminary Comments**

15  
16 This section is derived from Section 9 of the UMVCT. It makes clear that enforcement of  
17 a lien by judicial process must be effected against the vehicle, not the certificate of title.  
18 However, this section does not relieve a person of any duty under this [act] or law other than this  
19 [act] or preclude any remedies in personam. For example, this section does not bar mandatory  
20 injunctive or other in personam relief against a person wrongfully withholding a certificate of  
21 title, *e.g.*, a turn-over order following a successful replevin action. In addition, if a certificate of  
22 title is being wrongly withheld by a third party, there may be a remedy under Sections 16-23. For  
23 example, a lien creditor could seek possession of the vehicle using legal process, and then obtain  
24 a certificate of title under Section 21 or 23; a buyer whose seller wrongfully fails to execute the  
25 certificate of title can obtain a new title under Section 22.  
26

## 27 **SECTION 13. OTHER INFORMATION.**

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

1 met.

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

4 (c) The office may require such information relating to vehicle as may be required  
5 for payment of taxes or for issuance or renewal of license tags.

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

10 (e) A submission of information under this section and its inclusion in the files of  
11 the office is not a certificate of title, an application for a certificate of title, or a termination  
12 statement and does not provide a basis for transferring or determining ownership of vehicle.

### 13 Preliminary Comments

14  
15 The purpose of this section is to allow a procedure for registration of information by the  
16 office for purposes not related to certificate of title transactions. Some states require registration  
17 of information as a trigger for other laws or requirements, *e.g.*, relating to taxes or exhaust  
18 emissions. This section accommodates that function. An example would be the need of a lessee  
19 to register in order to purchase or renew license tags for vehicle owned by the lessor. This  
20 section would permit the lessor to provide registration information to the lessee or the office,  
21 who could then register the information in the files of the office in order to allow the purchase of  
22 license tags. Another example would be a buyer of vehicle who cannot satisfy the requirements  
23 for application of a certificate of title but can provide sufficient registration information to the  
24 office to permit the payment of required fees and acquisition of license tags for the vehicle. Of  
25 course, the office should be cautious to limit the use of registrations and not allow this procedure  
26 to be used as a substitute for certificates of title.

27  
28 If the vehicle is subject to a lease, the office may require the submission of the lessee's  
29 name and address and the termination date of the lease, and may designate the lessee or the  
30 lessor, or both, as a person to receive information relating to the vehicle or certificate of title.  
31

1           This section is derived partially from the UMVCT Section 11. The requirement for a  
2 bond at subsection (c) is derived from UMVCT Section 11(b). Subsection (c) is intended to  
3 provide standards for the conditions on registration that can be imposed pursuant to that  
4 subsection: Making clear that conditions can be imposed only to effectuate state law, but for that  
5 purpose as the office reasonably deems appropriate; any requirement for a bond is at the  
6 discretion of the office.

7  
8           Choice of law concerns with respect to registration under old Article 9 Section 9-  
9 103(2)(b) were resolved in revised Article 9 Section 9-303 and do not exist in this [act], *e.g.*  
10 under Section 4. Therefore there are no choice of law implications relating to certificates of title  
11 as a result of registration under this section.  
12

#### 13           **SECTION 14. MAINTENANCE OF FILES.**

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

15                               (1) ascertain the vehicle identification number of the vehicle to which the  
16 record relates;

17                               (2) create or maintain a file that indicates the vehicle identification number  
18 of the vehicle to which the record relates and the information in the record, including the date  
19 and time the record was delivered to the office;

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

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

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

26                   (c) Each file maintained under this section must include all indicated security  
27 interests, title brands, and stolen-property reports applicable to the vehicle, and the name and

1 address of any known secured party or claimant to ownership.

2 (d) Except as otherwise provided by law other than this [act], the files of the office  
3 are public records.

4 ***Legislative Note:***

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

9 **Preliminary Comments**

10 [Cross-reference other laws -- Drivers Privacy Protection Act]

11  
12  
13 Derived from UMVCT Section 8 and UCC Article 9 Section 9-519. This is a counterpart  
14 to Article 9 Section 9-519(a).

15  
16 The office is required to accept each application for a certificate of title that is submitted  
17 in accordance with Section 9 and, if the files of the office indicate that all security interests have  
18 been terminated, to create a written or electronic certificate of title, at the option of the owner in  
19 accordance with this [act]. See Sections 9-11, 15, and 21-23.

20  
21 This section requires the office to maintain files of the information required for the  
22 purposes of this [act]. Inherent in this obligation is the authority to maintain the files directly, or  
23 to provide for such maintenance by a qualified third party. Section 11 requires that any  
24 certificate of title created by the office must reflect the files of the office as to the information  
25 required pursuant to this [act].  
26

27 **SECTION 15. DELIVERY OF CERTIFICATE OF TITLE.**

28 (a) Upon creation of a certificate of title, the office shall promptly deliver the  
29 certificate of title, if written, or a record evidencing the certificate of title, if electronic, to the  
30 secured party of record, if any, to the address shown on the security interest statement submitted  
31 by the secured party of record and, unless previously provided to the owner of record, shall  
32 deliver a record evidencing the certificate of title to the owner of record at the address indicated  
33 in the files of the office. If no secured party is indicated in the files of the office, the written

1 certificate of title or record evidencing the electronic certificate of title must be delivered to the  
2 owner of record. A record evidencing an electronic certificate of title may be delivered to either  
3 a mailing address or an electronic communication address if indicated in the files of the office.

4 (b) Within a reasonable period not to exceed [15] business days after receipt of a  
5 request for a written certificate of title pursuant to subsection (a), the office shall create the  
6 certificate and deliver it to the person making the request.

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

10 (d) If an electronic certificate of title is created, any existing written certificate of  
11 title must be canceled. The cancellation must be noted on the face of the written certificate of  
12 title and in the files of the office with an indication of the date and time of cancellation.

### 13 **Preliminary Comments**

14  
15 Derived from UMVCT Section 10. *See also* Section 8 Note that Section 9 (Application  
16 for a Certificate of Title) provides for optional use of an e-mail address, to be used for delivery of  
17 electronic records.

18  
19 The determination by the office of the secured party; as required under this section, is an  
20 administrative determination for purposes of this section and is not dispositive of priority issues  
21 governed by UCC Article 9. The secured party of record, if any, may elect to have the office  
22 create a written certificate of title. The owner of record also may make such an election but only  
23 if no secured party is indicated in the files of the office.

24  
25 This section does not require creation of a written certificate of title, except at the request  
26 of the secured party of record or, in some circumstances, the owner; if a written certificate of title  
27 is created it must be delivered to the secured party of record, if any. This is designed to make the  
28 state a certificate of title “title holding” state when the option to have a written certificate of title  
29 is exercised. However, while “title holding” may be useful for anti-fraud purposes, it also may  
30 create delays for subsequent purchasers who need the certificate of title to perfect a new security  
31 interest or otherwise execute a subsequent transaction. Under the U.S. Supreme Court’s

1 interpretation of the Bankruptcy Code in *Fidelity Financial Services v. Fink*, 522 U.S. 211  
2 (1998), such delays may be legally fatal. This section allows the owner to request creation of a  
3 written certificate of title to facilitate subsequent transactions, if all security interests have been  
4 terminated. If the vehicle is subject to a perfected security interest, this section does not allow  
5 the owner to require the office to create a written certificate of title. However, this does not  
6 interfere with the owner's ability to refinance a prior secured credit transaction, as Sections 4, 24,  
7 and 25 allow perfection of a new security interest by filing a security interest statement, without  
8 submission of the certificate of title to the office, if the requirements at Section 4(d) are met.  
9 Thus, in the circumstances provided at Section 4(d), a secured party can refinance a prior loan or  
10 credit sale, perfect a new security interest in a timely manner under the Bankruptcy Code, 11  
11 U.S.C. § 547(c)(1) or (3), without the certificate of title, pay off the prior creditor, and await the  
12 prior creditor's release of any written certificate of title, without risk of attack under the  
13 Bankruptcy preference rules. This illustrates the importance of allowing subsequent parties to  
14 search for and file security interest statements without otherwise having access to the certificate  
15 of title. See Sections 4, and 24-25.

16  
17 Upon a proper request, the office must create and deliver a written certificate of title  
18 within a reasonable period, not to exceed a maximum specified limit to be determined by each  
19 state. Fifteen days is recommended as a customary period[, consistent with the UMVCT].  
20

## 21 **SECTION 16. TRANSFER.**

22 (a) Upon sale of a vehicle covered by a certificate of title, a person authorized to  
23 execute the certificate of title, as promptly as practicable and in compliance with this [act] and  
24 other law, shall execute the certificate to the buyer or deliver to the office a signed certificate of  
25 title or a record evidencing transfer of an electronic certificate of title indicating transfer of the  
26 certificate of title to the buyer. The buyer of a vehicle covered by a certificate of title has a  
27 specifically enforceable right to require the seller to execute the certificate of title to the buyer or  
28 deliver to the office a signed certificate of title or a record evidencing transfer of an electronic  
29 certificate of title indicating transfer of the certificate of title to the buyer.

30 (b) Execution of a certificate of title covering a vehicle created in any jurisdiction  
31 satisfies the requirement in subsection (a).

1 (c) Execution of a certificate of title covering a vehicle created in any jurisdiction  
2 or a certificate of origin transfers the transferor's legal title to the vehicle to the transferee.

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

### 8 Preliminary Comments 9

10 Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers of  
11 ownership to vehicles covered by a certificate of title. Subsection (c) makes clear that the  
12 transferor's ownership is transferred upon execution of the certificate of title or a certificate of  
13 origin, even though an application for a new certificate of title has not been made. A certificate  
14 of title is evidence of this ownership. *See* Section 3(a)(5). Subsection (d) clarifies that  
15 ownership of vehicle covered by a certificate of title also may be transferred without the  
16 certificate of title, though such transfers are not effective as to third parties claiming an interest in  
17 the vehicle except as provided in Section 18 or 19, *e.g.*, with respect to the rights of a good faith  
18 purchaser for value or a buyer in ordinary course of business. *See also* Sections 20-22. For  
19 example, rights under Section 16(d) are subject to claims asserted under Section 18(b) or 19(b).  
20

21 This [act] is supplemented by otherwise applicable law, for example the law of agency.  
22 *See* Section 2. Therefore the obligations and rights recognized in this section can be exercised by  
23 authorized representatives of the transferor and transferee. *See also* Section 24(b).  
24

25 Section 16(a) provides the buyer a right to execution of the certificate of title upon sale of  
26 the vehicle. Subsection (c) provides that execution of the certificate of title constitutes a transfer  
27 of ownership. After execution of the certificate of title the transferor is no longer the vehicle  
28 owner, *e.g.*, for purposes of financial responsibility laws. Subsection (d) recognizes that  
29 ownership can also be transferred by other means, *e.g.*, by a contract or bill of sale; such transfers  
30 are not invalidated by this [act] or the failure to execute a certificate of title, though such  
31 transfers may be ineffective against other persons claiming an interest in the vehicle (*e.g.*, a  
32 secured creditor of the transferor).  
33

34 This section governs the rights of the parties to transfers of legal title. Except as noted  
35 above, the rights and priorities of other parties, including secured parties and lien creditors, are  
36 governed elsewhere in this [act] and by other law.

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

## 6                    **SECTION 17. NOTICE OF TRANSFER WITHOUT APPLICATION.**

7                    (a) A transferor or transferee of legal title to vehicle may deliver a signed record to  
8 the office indicating the transfer, without filing an application for a certificate of title in  
9 accordance with standards and procedures established by the office. The record [may evidence  
10 the transfer of legal title between the transferor and transferee but] is not effective as to other  
11 persons claiming an interest in the vehicle.

12                    (b) A buyer in the business of selling goods of that kind shall deliver a record  
13 under subsection (a) within [thirty] days of the sale, unless an application has been made under  
14 Section 9.

### 15                    **Preliminary Comments**

16  
17                    This section provides a basic legal framework for providing notice of ownership transfers  
18 to the office, without application for or execution of a certificate of title and evidence. This  
19 allows a transferor to document its non-ownership of a vehicle. This is intended to supplement  
20 Sections 9, 10, 13, 16, and (as relevant) Sections 21-22. For example, one purpose is to allow a  
21 transferor or transferee to provide notice of the transfer to the office without meeting the  
22 requirements for an application under Section 9.  
23

24                    This notice procedure is not a substitute for an application for a certificate of title  
25 pursuant to Section 9. A record submitted or file created pursuant to this section is not a  
26 certificate of title or an application for or execution of a certificate of title. In order for a  
27 certificate of title to be created pursuant to Section 10, reflecting the transfer, the transferee of the  
28 vehicle must submit to the office the signed certificate of title or other signed record evidencing  
29 the transfer, and the information required by Section 9, or any other documentation required by  
30 the office in accordance with Sections 21-22, as applicable, including submission of any required  
31 fee and tax. this section merely provides a mechanism for providing notice to the office for  
32 informational purposes, for whatever purposes the office, or the transferor or transferee, may  
33 desire; this section does not define any resulting legal consequences. The legal effects of notice



are left to law other than this section. *See, e.g.*, Section 16(c) (execution of certificate of title passes legal title, without notice to the office); Section 16(c) (legal title may pass without certificate of title). The office that receives this information should provide a procedure to identify, expunge, or segregate contested or questionable information in appropriate circumstances.

## **SECTION 18. POWER TO TRANSFER.**

(a) A purchaser of goods acquires all interests that the transferor had or had power to transfer, except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person having voidable title to goods has power to transfer a good title to a good-faith purchaser for value. If goods have been delivered under a transaction of purchase, the purchaser has the power to transfer good title to a good-faith purchaser for value even though:

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

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

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

(4) the transfer in the transaction of purchase was procured through fraud punishable as larcenous under the criminal law.

(b) Entrusting of goods to a merchant that deals in goods of that kind gives the merchant the power to transfer all rights of the entruster to a buyer in ordinary course of business or, to the extent of the lessee’s interest, to a lessee in ordinary course of business, even if a certificate of title is not executed to the buyer or lessee. In this subsection, “entrusting” includes

any relinquishment of possession and any acquiescence in retention of possession of the goods regardless of any condition expressed between the parties to the relinquishment or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods was larcenous under the criminal law.

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

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

### **Preliminary Comments**

Subsection (a) is designed to be consistent with UCC Section 2-403(1), to protect good faith purchasers for value, so as to conform certificate of title issues to the equivalent rules in UCC Article 2. *See also* Article 2A Sections 2A-314 and 2A-315. "Value" is defined at UCC Section 1-204. Failure of a purchaser to obtain execution of a certificate of title does not bar good faith purchaser status.

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

Sections 18-22 comprise a package that accommodates electronic and informal transfers while recognizing the primacy of a written certificate of title and protecting good faith purchasers and buyers in ordinary course of business.

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

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

(1) a security interest in the vehicle indicated on a certificate of title; and

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

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

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

11                   (2) does not have [notice] [knowledge] of the security interest in the  
12 vehicle.

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

18                   (d) If, while a security interest in a vehicle is perfected by any method under the  
19 law of any jurisdiction, the office creates a written certificate of title that does not indicate that  
20 the vehicle is subject to the security interest or contain a statement that it may be subject to  
21 security interests not indicated on the certificate, the security interest is subordinate to a  
22 conflicting security interest in the vehicle that is perfected under Section 25 after creation of the

1 written certificate of title and without the conflicting secured party's knowledge of the security  
2 interest.

### 3 Preliminary Comments 4

5 Subsection (a) and Section 18(a) state the basic common law rule of assignment, which  
6 also runs throughout the UCC: The transferee takes the rights of the transferor, *e.g.*, subject to  
7 security interests as indicated on the certificate of title. Subsection 19 (a) also reflects the Article  
8 9 principle that rights under the certificate of title are paramount. *See, e.g.*, Article 9 Sections  
9 9-311, 9-335, 9-337, 9-338. This represents the base line rule, with subsection (b) stating a  
10 corollary: A buyer who takes by execution of a certificate of title and meets the other  
11 requirements of subsection (b) takes free of security interests not indicated on the certificate of  
12 title. Subsection (c) then provides an exception, allowing a buyer in ordinary course to take free  
13 of security interests indicated on the certificate of title or otherwise perfected, even if the buyer  
14 has knowledge of the security interest and the certificate of title is not executed. *See also*  
15 Sections 16-18 and 26-27; UCC Article 2A Section 2A-304 and Official Comment.  
16

17 Subsection (b) is patterned on UCC Article 9 Section 9-337, but with important  
18 differences: Subsection (b) applies to intrastate sales, while Section 9-337 applies only to  
19 interstate scenarios; unlike Section 9-337, subsection (b) allows a purchaser to take free of a  
20 security interest properly perfected in the same state (though only if it is not indicated on a  
21 written certificate of title executed to the buyer). However, subsection (b) also imposes  
22 requirements on the buyer not found in Section 9-337: Execution of the certificate of title; good  
23 faith; and a lack of notice (compared to only the lack of knowledge required by Section 9-337).  
24 "Notice" is defined at UCC Section 1-202. These requirements assure that only an innocent  
25 purchaser will qualify for the exceptional protection provided by this section.  
26

27 Subsection (b) allows a buyer (other than a dealer) to rely on a certificate of title in the  
28 purchase of vehicle for value and without notice of an adverse claim not indicated on the  
29 certificate of title. Other evidence of reliance is not required: Subsection 19(b) requires only that  
30 the "buyer" (as defined in Section 3(a)(1)) take delivery of the vehicle in good faith, for "value,"  
31 and without "notice" of the adverse claim by execution of a written certificate of title without an  
32 indication of the adverse claim. This resolves, in favor of such a buyer, conflicts between this  
33 buyer and a secured party whose interest may be superior to the transferor. As noted, Subsection  
34 (b) is similar to Article 9 Section 9-337, except that Subsection (b) applies to intrastate transfers  
35 and imposes additional burdens on the buyer.  
36

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

1           The result of subsection (c) is to allow the BIOCOP of vehicle covered by a certificate of  
2 title to take free of claims and security interests created by the seller (*e.g.*, an inventory security  
3 interest created by an auto dealer who sells the vehicle to a BIOCOP), even if the secured party  
4 holds the certificate of title; but, like Section 9-320, subsection (c) does not allow the BIOCOP  
5 to take free of a security interest created by a consignor to the dealer that sold the vehicle, if the  
6 security interest is perfected under this act, because that is not a security interest created by the  
7 seller, unless the consignor and dealer/consignee are the same or are so closely connected as to be  
8 treated as the same entity. This reflects long-standing UCC policy that even a BIOCOP only  
9 takes free of security interests created by his or her seller, not security interests created by other  
10 or prior parties. *But see* Section 18(b) (the entrustment rule) for buyer remedies in a consignment  
11 scenario.  
12

13           Section 19 is consistent with the UCC and most case law. It also resolves a related issue:  
14 Can a buyer of vehicle from a dealer be a BIOCOP without execution of the certificate of title?  
15 The UCC definition of BIOCOP is not specific on this, but is broad enough to accommodate this  
16 as a common dealer practice. The cases are split. However, this is a common dealer practice,  
17 and Sections 18(b) and 19(c) protect a consumer buying from a dealer without execution of a  
18 certificate of title. Rights as between the dealer and its secured party or consignor, such as the  
19 priorities of claims to the sales proceeds, are left to other law. *See, e.g.*, UCC Article 9  
20 Sections 9-102(a)(64), 9-315, 9-322. “Execution” is defined at UCOTA Section 3(a)(11).  
21

## 22           **SECTION 20. EFFECT OF INCORRECT INFORMATION OR OMISSION.**

23           (a) Except as otherwise provided in this section, a certificate of title, certificate of  
24 origin, security interest statement, or other record required or authorized by this [act] is effective  
25 even if it contains incorrect information or required information is omitted.

26           (b) In addition to any rights provided under Section 18 or 19, if a certificate of  
27 title, certificate of origin, security interest statement, or other record is seriously misleading  
28 because it contains incorrect information or omits required information, a purchaser of the  
29 vehicle to which the record relates takes free of any claim or interest [the validity of which is  
30 dependent on the correct information or omitted information,] [which would have been contained  
31 in the record if the correct or omitted information had been provided,] to the extent that the  
32 purchaser gives value in reasonable reliance on the incorrect information or the absence of the

1 omitted information.

2 (c) Except as otherwise provided in subsection (d) or in Section 24(c), a  
3 description of the vehicle, including the vehicle identification number, to which a certificate of  
4 title, certificate of origin, security interest statement, or other record relates that otherwise  
5 satisfies the requirements of this [act] is not seriously misleading, even if not specific and  
6 accurate, if the description, reasonably identifies the vehicle.

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

### 12 Preliminary Comments

13  
14 Often a certificate of title, certificate of origin, security interest statement, or other record  
15 that fails to state accurately the name and address of the owner, the name and address of the  
16 secured party, or the description of the vehicle, is not seriously misleading solely for that reason,  
17 because the certificate of title is provided to the purchaser or secured party by the owner, the  
18 correct or sufficient information is easily ascertainable, and the error causes no injury. Minor  
19 errors of this type, *e.g.*, an error in the spelling of the owner's name, are common and ordinarily  
20 harmless, and should not invalidate a transaction. Section 18 makes clear that a certificate of title  
21 or other record containing erroneous information, or omitting information, is not rendered invalid  
22 by the erroneous information or omission, and is valid and effective, except to the extent that a  
23 purchaser is misled by the erroneous information or omission as provided in this section.

24  
25 This section is modeled on Article 9 Sections 9-108, 9-337, 9-338, 9-502, and 9-506. As  
26 noted, the purpose is to prevent harmless errors from invalidating a transaction, *e.g.*, recognizing  
27 that errors in the parties' names or an error in the description of the vehicle often will not mislead  
28 parties to a certificate of title transaction. This issue is different than under Article 9, where an  
29 error in the debtor's name can mislead filing searches. Thus, no equivalent to Article 9  
30 Section 9-506(c) is needed if the security interest is noted on a written certificate of title. For  
31 other cases, subsection (d) provides a rule equivalent to Section 9-506(c).  
32

1 Subsection (b) provides a sanction, short of invalidation, where a seriously misleading  
2 error causes damage to a reliance party. *See* subsection (d) for a procedure to determine if an  
3 error involving a security interest is seriously misleading. It is not misleading for a secured party  
4 or lessor to be indicated as the owner on the certificate of title. *See* Section 25(b).  
5

6 Subsection (c) provides general rules governing errors or omissions in records pertaining  
7 to certificates of title and related records, modeled on Article 9 Section 9-506(a) and (b). Except  
8 as provided at subsection (d), an error in the name of the owner or secured party, or the  
9 description of the vehicle, is unlikely to prejudice third parties in a certificate of title transaction.  
10

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

21 The exception is described at subsection (d). The exception at subsection (d) is necessary  
22 where the search depends on the files of the office, because in this context an error in the name of  
23 the owner or VIN could result in a record being mis-filed or not discovered in a proper search of  
24 the files of the office, depending on the search logic and indexing system being used.  
25

## 26 **SECTION 21. TRANSFER OF OWNERSHIP BY OPERATION OF LAW.**

27 (a) In this section:

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

30 (A) on account of death, divorce, merger, consolidation,  
31 dissolution, or bankruptcy;

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

34 (C) through other legal process.

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

3                   (A) a statement that, by operation of law, the transferee has  
4     acquired or has the right to acquire the ownership interest of the owner of record;

5                   (B) the name and mailing address of the owner of record and the  
6     transferee and any other information required by Section 9(a);

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

9                   (D) a statement:

10                   (i) that the certificate of title is an electronic certificate of  
11     title;

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

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

16                   (b) If a transfer-by-law statement is delivered to the office with the fee and taxes  
17     and documentation satisfactory to the office as to the transferee’s ownership interest or right to  
18     acquire the ownership interest of the owner of record, unless it is rejected by the office for a  
19     reason set forth in Section 9, the office shall:

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

21                   (2) promptly send notice to the owner of record and to all persons  
22     indicated in the files of the office as having an interest, including a security interest, in the



1 vehicle that a transfer-by-law statement has been delivered to the office;  
2 (3) amend its records to reflect the transfer;  
3 (4) cancel the certificate of title created in the name of the owner of record  
4 indicated in the transfer-by-law statement, whether or not the certificate has been delivered to the  
5 office;  
6 (5) create a new certificate of title pursuant to Section 9, indicating the  
7 transferee as owner of record; and  
8 (6) deliver the new certificate of title pursuant to Section 19.  
9 (c) [This section does not apply to a transfer of an interest in a vehicle by a  
10 secured party under [Uniform Commercial Code Article 9].

#### 11 **Preliminary Comments**

12  
13 This section supplements UCC Article 9 Section 9-619, though this section has a  
14 different purpose and therefore diverges from the Section 9-619 language. The purpose of this  
15 section is to provide a procedure to accommodate transfers of ownership due to death, divorce,  
16 corporate mergers, bankruptcy, enforcement of liens, and the like. As with Section 9-619, this  
17 section makes clear that it is not a substitute for a UCC Article 9 disposition of collateral. The  
18 post-default remedies of a secured party are governed by [Uniform Commercial Code Article 9].  
19

#### 20 **SECTION 22. APPLICATION FOR TRANSFER OF OWNERSHIP [OR** 21 **TERMINATION OF SECURITY INTEREST STATEMENT] WITHOUT** 22 **CERTIFICATE OF TITLE OR CERTIFICATE OF ORIGIN.**

23 (a) Except as provided in Section 21, the office shall create a certificate of title  
24 under this section upon receiving an application that includes an indication of a transfer of  
25 ownership [or a direction to terminate a security interest statement] but is not accompanied by  
26 submission of a signed certificate of title or certificate of origin [or, as applicable, a termination

1 statement pursuant to Section 26], only if:

2 (1) all other requirements under Sections 9 and 10 are met;

3 (2) the applicant has provided an affidavit stating facts that indicate the  
4 applicant is entitled to a transfer of ownership [or termination of the effectiveness of a security  
5 interest statement];

6 (3) at least 45 days before the office creates the certificate of title, notice of  
7 the application was sent to all persons having an interest in the vehicle as indicated in the files of  
8 the office and no objection from any of these persons has been received by the office; and

9 (4) the applicant submits any other information required by the office to  
10 evidence the applicant's ownership [or right to termination of the security interest statement], and  
11 the office has no credible information indicating theft, fraud, or any undisclosed or unsatisfied  
12 security interest, lien, or other claim to an interest in the vehicle.

13 (b) Unless the office determines, by any reasonable method, that the value of the  
14 vehicle is less than [\$3,000], the office may require an applicant under subsection (a) to post a  
15 bond or provide an equivalent source of indemnity or security, in a form prescribed by the office,  
16 providing for indemnity of any owner, purchaser, or other claimant, for any expense, loss, delay,  
17 or damage, including reasonable attorneys' fees but not consequential damages, resulting from  
18 creation of a certificate of title [or termination of a security interest statement]. The bond or  
19 other source of indemnity may not exceed twice the value of the vehicle as determined by the  
20 office.

21 (c) If the office has not received a claim for indemnity within one year after  
22 creation of the certificate of title under subsection (a), upon request in a form and manner

1 specified by the office, the office shall release any bond, indemnity, or other security.

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

### 9 Preliminary Comments

10  
11 Derived from UMVCT Section 11. *See also* UCOTA Sections 18, 19, 21 and 23.  
12 Section 22 may be used, *e.g.*, to request a certificate of title to effectuate a sale, gift, auction or  
13 judicial sale, UCC Article 9 disposition sale, or other transfer where the seller, donor, or other  
14 transferor is unable or unwilling to obtain or execute the certificate of title. Section 22 can also  
15 be used in lieu of a termination statement under Section 26, *e.g.*, if a secured debt has been  
16 satisfied and the secured party is unable or unwilling to provide a termination statement.  
17 Section 22 requires a supporting affidavit, 45 days prior notice to all known interested parties,  
18 and (at the option of the office): other documentation (*e.g.*, a bill of sale or sales contract and  
19 cancelled check or other evidence of payment); a bond; and/or a legend on the certificate of title,  
20 as additional potential safeguards to supplement the procedures at Sections 9 and 10.

21  
22 This section is not for use by an owner of record seeking to replace a lost, stolen, or  
23 destroyed certificate of title; that procedure is provided at Section 23. Section 23 is designed to  
24 allow a replacement title to be obtained by the same owner; it does not directly involve a transfer  
25 of ownership. In contrast, Section 22 provides for a transfer of title or termination of perfection  
26 of a security interest where the applicant presents evidence that he or she is entitled to such a  
27 transfer or termination, satisfactory to the office, and the transferor or secured party is unable or  
28 unwilling to deliver the certificate of title as otherwise required. The requirements and remedy  
29 provided by this section are in addition to those set forth elsewhere in this [act], *e.g.*, at  
30 Sections 21 and 23.  
31

### 32 SECTION 23. REPLACEMENT WRITTEN CERTIFICATES OF TITLE.

33 (a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise

1 becomes unavailable or illegible, the secured party of record or, if there is no secured party  
2 indicated in the files of the office, the owner of record may apply for and, by furnishing  
3 information satisfactory to the office, obtain a replacement certificate of title in the name of the  
4 owner of record.

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

8 (c) The existing certificate of title must be submitted to the office with the  
9 application for a replacement certificate of title, unless it has been lost, stolen, destroyed, or is  
10 otherwise unavailable.

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

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

#### 15 Preliminary Comments

16  
17 Derived from UMVCT Section 13. A purchaser to whom a replacement certificate of  
18 title is executed can qualify as a good faith purchaser (GFP) or BIOCB, *e.g.*, under Section 16, 18  
19 or 19, UCC Article 2 Section 2-403, and Article 9 Sections 9-320, 9-337, and 9-338, if all other  
20 requirements are met. The legend required by subsection (c) does not give notice sufficient to  
21 bar GFP or BIOCB status.  
22

### 23 SECTION 24. EFFECTIVENESS OF SECURITY INTEREST STATEMENT.

24 (a) A security interest statement is sufficient if it includes the name of a debtor,  
25 the name of a secured party or a representative of a secured party, [and] a description of the

1 vehicle [, and it is authorized by the debtor as if it was a financing statement authorized by the  
2 debtor under the [Uniform Commercial Code.]] A description of the vehicle is sufficient if it  
3 reasonably identifies the vehicle and is not seriously misleading under Section 20.

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

6 (c) Except as provided in subsection(e) or (f), a security interest statement is not  
7 received if the office rejects the statement under subsection (e). The office may reject a security  
8 interest statement only [in the manner specified in subsection (e) and only] if:

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

10 (2) an amount equal to or greater than the required filing fee is not  
11 tendered;

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

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

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

17 (e) To reject a security interest statement, the office must send notice of the  
18 rejection to the person that delivered the statement, indicating the reasons for the rejection and  
19 the date the statement would have been received had the office not rejected it. The office shall  
20 send the notice not later than midnight of the second business day after the business day on  
21 which the security interest statement was delivered to the office. If the office does not send the  
22 notice by midnight of the second business day after the business day on which a statement that is

1 sufficient under subsection (b) was delivered to the office, the security interest statement is  
2 received as of the time it was delivered to the office. [The office is not liable for a failure to send  
3 notice under this subsection.]

4 (f) If the office rejects a security interest statement tendered with the filing fee for  
5 a reason other than one set forth in subsection (c), the statement, if sufficient under  
6 subsection (a), is effective as of the business day on which the statement was delivered to the  
7 office except as against a purchaser of the vehicle which gives value in reasonable reliance upon  
8 the absence of the security interest statement from the file.

9 (g) Failure of the office to index a security interest statement correctly or to  
10 indicate the security interest on the certificate of title does not affect the receipt of the security  
11 interest statement.

## 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 statement is effective on receipt by the  
16 appropriate office and payment of the required fee, unless it is properly rejected for specified  
17 reasons within a specified time. The security interest statement is effective upon receipt and  
18 payment of applicable fees under subsection (a), if the statement is sufficient under  
19 subsection (b) and is not rejected under subsections (c) and (e). If the security interest statement  
20 is effective under Section 24, and the security interest has attached under UCC Article 9, the  
21 security interest is perfected under Section 25(a). Thus, perfection of the security interest occurs  
22 upon receipt the security interest statement and payment of the fee, even if the security interest is  
23 never indicated in the files of the office or on a written certificate of title, if there has been  
24 attachment under UCC Article 9. A record that is not sufficient under subsection (b) is not  
25 received by the office for purposes of this section. The effect of this section is limited to receipt  
26 and the effectiveness of the security interest statement; it does not impose any affirmative duties  
27 on the office.

28  
29 Errors and omissions in the security interest statement or certificate of title are governed  
30 by Section 20. The analysis may be different than under Article 9. For example, under  
31 Section 20 an error in the secured party's or debtor's name or the description of the vehicle often  
32 will be a harmless error, because it will not affect a search of the files under the vehicle

1 identification number (VIN) or execution of a written certificate of title. Even an error in the  
2 VIN may be harmless under Section 20. Therefore, sufficiency under subsection (b) does not  
3 require precision with respect to the debtor's or the secured party's name, or the description of  
4 the collateral, in order for receipt of the security interest statement to occur and the statement to  
5 be effective. If the requirements for sufficiency under subsection (b) are met, and the statement  
6 is not rejected under subsection (e), the security interest statement is received under subsection  
7 (a), and the effect of any errors will be determined under Section 20. An error in the VIN is  
8 grounds for rejection under subsection (c), but does not require rejection, *e.g.*, if the office is able  
9 to reconcile the error. Even if the office rejects the form due to an erroneous VIN under  
10 subsection (c), the form may be received and effective under subsection (a) if the rejection is not  
11 timely under subsection (e). In that case the effect of the erroneous VIN will be determined  
12 under Section 20. Thus Section 24 determines the receipt effectiveness of a security interest  
13 statement for purposes of perfection under Section 25, while Section 20 determines the effect of  
14 any erroneous information in that statement.

15  
16 Rules governing an application for a certificate of title are at Sections 8 and 9. Adverse  
17 claims are covered by Sections 16-19. The secured party may qualify as a "purchaser" as that  
18 term is defined in Section 3, *e.g.*, for purposes of the Section 18 provisions governing adverse  
19 claims.

20  
21 Consistent with Article 9 Section 9-311(a), UCOTA displaces Article 9 only with respect  
22 to the Article 9 provisions requiring the filing of a financing statement to perfect a security  
23 interest, substituting the UCOTA rules governing the effectiveness of a security interest  
24 statement. Other Article 9 rules, such as those governing attachment (Section 9-203), priority  
25 (Article 9 Part 3), and enforcement (Article 9 Part 6) continue to apply. Moreover, under  
26 Article 9 Section 9-311(b), unless displaced by the specific provisions of this [act], to the extent  
27 applicable the filing provisions of Article 9 Part 5 may continue to be relevant to supplement the  
28 provisions of this [act]. For example, *see* Article 9 Sections 9-311(d), 9-313(b), and 9-508.  
29 However, this [act] displaces much of Article 9 Part 5 (Filing Office; Contents and Effectiveness  
30 of Financing Statement).

31  
32 Subsection (e) provides a procedure to require the office to notify a secured party if a  
33 security interest statement is rejected. The time limit for this notice reflects a balancing of the  
34 need for secured parties to receive prompt notice of the need to take remedial action, with the  
35 need of the office for sufficient time to process incoming security interest statements. If timely  
36 and proper notice of rejection is not sent under subsection (e), a security interest statement  
37 sufficient under subsection (b) is received under subsection (a), even though it may not otherwise  
38 meet the requirements of this [act] and was not recorded or indexed in the files of the office. In  
39 this circumstance, if the other requirements of subsection (a) and Article 9 are met, the security  
40 interest statement will be effective and under Section 25 the security interest will be perfected by  
41 the security interest statement. Of course, if the security interest statement is significantly  
42 defective on its face, *e.g.*, no debtor's name or a completely erroneous description of collateral, it  
43 may not be sufficient under subsection (b), or even if sufficient the error may render it seriously

misleading under Section 20. *See also* Section 18. Priorities between the secured party and those who may be prejudiced by the failure of the office to file and index the statement, or to indicate it on the certificate of title, are covered by other sections, *e.g.*, Sections 18-20.

## **SECTION 25. PERFECTION OF SECURITY INTEREST.**

(a) Except as otherwise provided in subsections (b), (d) and (e), a security interest in vehicle may be perfected only if a security interest statement that is effective under Section 24. The security interest is perfected upon the later to occur of receipt of the security interest statement under Section 24 or attachment of the security interest pursuant to [Uniform Commercial Code Section 9-203].

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

(c) If a secured party assigns a perfected security interest in a vehicle, the receipt of a security interest statement under Section 24 providing the name of the transferee or its representative as secured party is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. However, a purchaser of a vehicle subject to a security interest that obtains a release from the secured party indicated in the



1 files of the office or on the certificate of title takes free of the security interest and also takes free  
2 of the rights of a transferee if the transfer is not indicated in the files of the office or on the  
3 certificate.

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

7 (e) A secured party may perfect a security interest by taking possession of a  
8 vehicle only as provided in [Uniform Commercial Code Section 9-313(b) and 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),  
12 (b), and (c). One purpose is to establish a system for perfection of security interests by filing a  
13 security interest statement with the office, even if the secured party cannot obtain and submit to  
14 the office the certificate of title. Similarly, perfection does not require indication on a written  
15 certificate of title, although that does confer an additional measure of protection. *See* Sections 14  
16 and 16-19. Perfection occurs upon receipt of a sufficient security interest statement and payment  
17 of the required fee, making the statement effective under Sections 26 and 27, without indication  
18 on a certificate of title, or even if a certificate of title has not otherwise been created. This will  
19 also constitute an application for a certificate of title for purposes of choice of law under  
20 Section 4, subject to exceptions in that section. *See* Sections 4, 24, 25. Subsection (a) also  
21 makes clear that perfection under this section is the exclusive means of perfecting a security  
22 interest in vehicle, except as provided in subsections (e) and (f), which follow UCC Article 9  
23 Sections 9-311(d) and 9-313(b).

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

31  
32 Perfection under Sections 24-25, without indication of the security interest on a written  
33 certificate of title, would be effective against lien creditors, but not against a competing party  
34 who relies on the certificate of title, pursuant to Sections 14-19. For example, certain competing  
35 buyers would prevail under Section 18.

1 Subsection (b) recognizes that a secured party, lessor, or bailor may be listed as owner on  
2 the 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 If a secured party assigns a perfected security interest in a vehicle, the receipt of a security  
7 interest statement under Section 24 providing the name of the transferee or its representative as  
8 secured party is not required to continue the perfected status of the security interest. However, a  
9 purchaser of a vehicle subject to a security interest that obtains a release from the secured party  
10 indicated in the files of the office or on the certificate of title takes free of the security interest  
11 and also takes free of the rights of a transferee if the transfer is not indicated in the files of the  
12 office or on the certificate.

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

25  
26 As noted above, subsections (e) and (f) follow UCC Article 9 Sections 9-311(d), 9-  
27 313(b), and 9-316(d), to provide consistency with the UCC.

28  
29 A model security interest statement is provided at Section 27, consistent with the model  
30 forms in Article 9 Section 9-521.

## 31 32 **SECTION 26. TERMINATION STATEMENT.**

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

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

1       secured by the vehicle; or

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

3                       (b) A secured party indicated in the files of the office shall deliver the signed  
4       termination statement to the debtor or the office upon the earlier of:

5                       (1) [20] days after there is no obligation secured by the vehicle subject to  
6       the security interest statement and no commitment to make an advance, incur an obligation, or  
7       otherwise give value secured by the vehicle; or

8                       (2) [10] days after the secured party receives a signed demand from an  
9       owner and there is no obligation secured by the vehicle subject to the security interest and no  
10      commitment to make an advance, incur an obligation, or otherwise give value secured by the  
11      vehicle.

12                      (c) If a written certificate of title has been created and delivered to the secured  
13      party and a termination statement is required under subsection (a), the secured party shall deliver  
14      the written certificate of title to the debtor or the office with the termination statement, within the  
15      time provided in subsection (b). If the written certificate is lost, stolen, mutilated, or destroyed or  
16      is otherwise unavailable or illegible, the secured party shall deliver with the termination  
17      statement, within the time provided in subsection (b), an application for a replacement certificate  
18      of title meeting the requirements of Section 23.

19                      (d) Upon the delivery of a termination statement to the office pursuant to this  
20      section, [the security interest statement and] any notation of the security interest on the certificate  
21      of title to which the termination statement relates ceases to be effective.

22                      (e) Only a secured party whose security interest is required to be terminated must

1 deliver a termination statement to the office or the debtor.

2 (f) A secured party is liable for damages in the amount of any loss caused by its  
3 failure to comply with this section and for the reasonable cost of an application for a certificate of  
4 title under Sections 9 and 22.

5 (g) Upon a security interest statement ceasing to be effective under this section,  
6 the office shall indicate in its files the termination of the security interest statement.

### 7 **Preliminary Comments**

8 “Termination statement” is defined at Section 3(a)(29). The Uniform Security Interest  
9 Statement at Section 27 includes a Termination statement. Upon termination of the effectiveness  
10 of a security interest statement under this section, the office shall indicate in its files the  
11 termination of the security interest statement, and that any subsequent secured party indicated in  
12 the files of the office is the secured party of record. *See also* Section 9 (application for a  
13 certificate of title that includes a direction to terminate a security interest statement must include  
14 a termination statement[; Section 22 (termination without termination statement)]].  
15

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

17 (a) The office shall maintain a file containing the information provided in security  
18 interest statements and termination statements received by the office under Section 24 or  
19 Section 26 for at least [ten] years after termination of the security interest statement under  
20 Section 26. The information must be accessible by the vehicle identification number for the  
21 vehicle and any other indexing methods as provided by the office.

22 (b) If a person that files a record with the office, or submits information that is  
23 accepted by the office, requests an acknowledgment of the filing or submission, the office shall  
24 send to the person an acknowledgment showing the vehicle identification number of the vehicle  
25 to which the record or submission relates, the information in the filed record or submission, and

1 the date and time the record was received or the submission accepted. A request under this  
2 section must contain the vehicle identification number and be delivered by means authorized by  
3 the office.

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

6 (1) whether there is on file on a date and time specified by the office, but  
7 not a date earlier than three business days before the office received the request, any certificate of  
8 title, security interest statement, or termination statement that relates to a vehicle identified by a  
9 vehicle identification number designated in the request; and

10 (2) the name of the owner of record and the effective date of all security  
11 interest statements indicated in the files of the office [that are not subject to a termination  
12 statement under Section 26].

13 (d) In responding to a request under this section, the office may communicate the  
14 requested information in any medium. However, if requested, the office shall send the requested  
15 information in a record that is admissible in evidence without extrinsic evidence of its  
16 authenticity.

17 (e) The office shall comply with the requirements of this section at the time and in  
18 the manner prescribed by the rules of the office but shall respond to requests under this section  
19 not later than two business days after the office receives the request. [A reasonable fee may be  
20 imposed for this service.]

## 21 **Preliminary Comments**

22  
23 Section 28 is derived from UCC Article 9 Sections 522-523.

1  
2           **SECTION 28. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
3 applying and construing this Uniform Act, consideration must be given to the need to promote  
4 uniformity of the law with respect to its subject matter among states that enact it.

5           **SECTION 29. SAVINGS CLAUSE.**

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

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

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

16           **[SECTION 30. TITLE BRAND.]**

17                           **Preliminary Comments**

18  
19           [Left blank to allow a state to insert its title brand statute. *See* also definition of “title  
20 brand” in Section 3, and Sections 9, 10, and 11.]  
21

22           **SECTION 31. EFFECTIVE DATE.** This [act] takes effect ....

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

1           **SECTION 33. TRANSITIONAL PROVISION.** A security interest that is enforceable  
2 immediately before this [act] takes effect and would have priority over the rights of a person that  
3 becomes a lien creditor at that time is a perfected security interest under this [act].

4                           **Preliminary Comment**  
5

6           Sections 31 and 34 are derived from UCC Article 9 Sections 9-702 and 9-703.