

DRAFT
FOR APPROVAL

UNIFORM CERTIFICATE OF TITLE ACT

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ON UNIFORM STATE LAWS

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UNIFORM CERTIFICATE OF TITLE ACT

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM CERTIFICATE OF TITLE ACT

Prefatory Note

This Uniform 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 limitations 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; similarly, all states have dealer licensing laws, most of which establish administrative structures and regulate some aspects of dealer transactions. 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. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY.** Unless

6 displaced by this [act], the principles of law and equity supplement its provisions.

7 **Preliminary Comments**

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

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

10 underlying purposes and policies, which are:

- 11
- 12 (1) to simplify, clarify, and modernize the law governing certificates of title;
- 13
- 14 (2) to permit the continued expansion of commercial practices through
- 15 custom, usage, and agreement of the parties; and
- 16
- 17 (3) to make uniform the law among the various jurisdictions.
- 18

19 **SECTION 3. DEFINITIONS.**

20 (a) In this [act]:

21 (1) “Buyer” means a person that buys or contracts to buy goods.

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

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

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

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

26 customary practices in the kind of business in which the seller is engaged or with the seller’s own

27 usual or customary practices. A buyer in ordinary course of business may buy for cash, by

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

8 (3) “Cancel,” with respect to a certificate of title or a certificate of origin,
9 means to make the certificate ineffective.

10 (4) “Certificate of origin” means a record created by a manufacturer or
11 importer as the manufacturer’s or importer’s proof of identity of a vehicle.

12 (5) “Certificate of title,” except in the phrases “certificate of title created
13 by a governmental agency of any state” and “certificate of title created by a governmental agency
14 of any jurisdiction,” means a record, created by the office and designated as a certificate of title
15 by it, that is evidence of ownership of a vehicle.

16 (6) “Create” means to bring a record into existence by making or
17 authorizing the record.

18 (7) “Deliver” means voluntarily to give possession of a record or to
19 transmit it, by any reasonable means, properly addressed and with the cost of delivery provided.

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

22 (9) “Electronic certificate of origin” means a certificate of origin

1 consisting of information that is stored solely in an electronic medium and is retrievable in
2 perceivable form.

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

6 (11) “Execute” means to sign and deliver a record on, attached to,
7 accompanying, or logically associated with a certificate of title or certificate of origin to transfer
8 ownership of the vehicle covered by the certificate.

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

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

13 (14) “Lessee in ordinary course of business” means a person that leases
14 goods in good faith, without knowledge that the lease violates the rights of another person, and in
15 ordinary course of business from a person, other than a pawnbroker, in the business of selling or
16 leasing goods of that kind. A person leases in ordinary course if the lease to the person comports
17 with the usual or customary practices in the kind of business in which the lessor is engaged or
18 with the lessor’s own usual and customary practices. A lessee in ordinary course of business may
19 lease for cash, by exchange of other property, or on secured or unsecured credit, and may acquire
20 goods or a certificate of title covering goods under a preexisting lease contract. Only a lessee
21 that takes possession of the goods or has a right to recover the goods from the lessor under
22 [Uniform Commercial Code Article 2A] may be a lessee in ordinary course of business. A

1 person that acquires goods in bulk or as security for or in total or partial satisfaction of a money
2 debt is not a lessee in ordinary course of business.

3 (15) “Lien creditor” means:

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

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

8 (C) a trustee in bankruptcy from the date of the filing of the
9 petition; or

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

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

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

15 (18) “Owner” means a person that has legal title to a vehicle.

16 (19) “Owner of record” means the owner of a vehicle as indicated in the
17 files of the office.

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

22 (21) “Purchase” means to take by sale, lease, mortgage, pledge,

1 consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in
2 a vehicle.

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

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

6 (24) “Secured party” means:

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

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

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

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

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

18 (25) “Secured party of record” means the secured party whose name is
19 provided as the name of the secured party or a representative of the secured party in a security-
20 interest statement that has been received by the office or, if more than one are indicated, the first
21 indicated in the files of the office.

22 (26) “Security interest” means an interest in a vehicle that secures

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

15 (27) “Security-interest statement” means a record created by a secured
16 party which indicates a security interest.

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

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

22 (29) “State” means a state of the United States, the District of Columbia,

1 Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory
2 or insular possession subject to the jurisdiction of the United States.

3 (30) “Termination statement” means a record created by a secured party
4 pursuant to Section 27 which:

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

7 (B) indicates that it is a termination statement or that the identified
8 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 created by a governmental agency of any jurisdiction.

12 (32) “Transfer” means to convey, voluntarily or involuntarily, an interest
13 in a 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 of a type in, upon, or by which an individual or property is customarily transported on a
17 road or highway, or a commercial, recreational, travel, or other trailer customarily transported on
18 a road or highway. The term does not include:

19 (A) an item of specialized mobile equipment not designed
20 primarily for 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

1 individual having a physical impairment[, or

2 (D) a manufactured home].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (11) “Sale,” [UCC Section 2-106(1)].

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

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

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

2 (15) “Value,” [UCC Section 1-204].

3
4 **Legislative Note:** *If a state has not enacted the 2002 uniform text of Articles 1, 2, and 2A, the*
5 *references to Articles 1, 2, and 2A, section numbers should be adjusted as needed to reflect state*
6 *law.*

7 8 Preliminary Comments

9
10 Section 3(a)(4) recognizes that a certificate of origin is a temporary record that typically
11 describes basic vehicle identification features, such as the vehicle, its manufacturer, and each
12 seller and purchaser during the period between manufacture of the vehicle and creation of the
13 first certificate of title. A certificate of origin may be created or authorized by the manufacturer
14 or, in the case of vehicle manufactured outside the United States, by the importer of the vehicle.
15 The certificate of origin is submitted to the office that creates the first certificate of title and is to
16 be cancelled at that time. *See also* Sections 6, 7, 9, 13, and 20.

17
18 The definition of “Certificate of title” at Section 3(a)(5) is similar to those in many state
19 certificate of title laws, in that it recognizes the certificate of title as evidence of ownership. A
20 certificate of title is defined as a “record,” meaning it can be in either paper or electronic form.
21 The definition of “certificate of origin” is similar in this regard. Thus the term “certificate of
22 title” is broad enough to include both electronic and written certificates of title. The term
23 “electronic certificate of title” or “written certificate of title” is used where the reference is
24 limited to one or the other. *See* section 3(a)(8), (10), (36).

25
26 A “certificate of title” governed by this Act can only be created by the “office” in this
27 state. *See* section 3(a)(5), (17). However, “certificate of title created by a governmental agency
28 of any state” means such a record created and designated by the appropriate government agency
29 of any state; and “certificate of title created by a governmental agency of any jurisdiction” means
30 such a record created and designated by the appropriate agency of the jurisdiction, whether or not
31 the jurisdiction is a state. These terms are cumulative: “Jurisdiction” includes any state, and
32 “any state” includes this State.

33
34 The definition at Section 3(a)(5) requires a certificate of title to have three basic elements:
35 (1) a record; (2) created or authorized by the appropriate office of this State; (3) and evidencing
36 title to a vehicle.

37
38 The definition of “certificate of title” is different from UCC Article 9 Section 9-
39 102(a)(10) in some important ways. The Article 9 definition incorporates by reference certain
40 standards that a state law must meet in order to be the applicable certificate of title law for
41 purposes of Article 9. UCOTA is that law, and therefore cannot directly use the Article 9
42 incorporation-by-reference approach. UCOTA must meet those requirements, not merely state

1 them. These requirements are met in this [act] at Sections 25 and 26; there is no need for the
2 requirements of Article 9 to be restated in this [act] in the definition at Section 3(a)(5). Moreover,
3 this Act provides for perfection of a security interest on receipt by the office of a security-interest
4 statement, subject to the additional UCC Article 9 requirements, even if the security interest is
5 not otherwise indicated on a certificate of title or the office never receives an application for a
6 certificate of title. *See* Sections 25, and 26. While this is consistent with Article 9 Section 9-
7 311(a)(2), this [act] requires provisions that directly encompass these functions, while Article 9
8 can simply tie into this [act] by reference. Therefore, receipt by the office of a security-interest
9 statement pursuant to Section 25 creates a basis for perfection under Section 26 and UCC Article
10 9 and triggers application of this Act pursuant to Section 26, even if there is no other record
11 covering the vehicle in the files of the office. This satisfies the requirements of Article 9 section
12 9-311(a)(2), as the vehicle is subject to perfection under this Act and this Act qualifies as a
13 certificate of title statute under Section 9-102(a)(10) and 9-311(a)(2). As a result no Article 9
14 filing is needed and perfection under UCOTA Section 26 is perfection for purposes of Article 9,
15 even if the office never creates a certificate of title. If another state creates a certification of title,
16 the choice of law rules of Section 4 and Article 9 Section 9-303 apply.

17
18 Pursuant to Sections 9 and 11(d), the certificate of title must provide for reassignment of
19 title by execution of the certificate of title, form, including dealer reassignments and secured
20 powers of attorney, *e.g.*, by execution of a form that is part of the certificate of title. *See also* the
21 definition of “execute,” at Section 3(a)(11).

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 (36); Section 10
26 (obligation of the office to create a certificate of title). A certificate of title can be created by the
27 office making a file that constitutes an electronic certificate of title pursuant to Sections 9, 10,
28 and 11, or by issuance of a written certificate of title pursuant to those sections.

29
30 “Deliver” as defined at Section 3(a)(7) means a transfer of possession of a record; as used
31 in this context the meaning and context of the term “transfer” are different from the definition of
32 “Transfer” at Section 3(a)(32), which refers to conveyance of an interest in vehicle. Payment by
33 the transferee for the cost of delivery constitutes “the cost of delivery provided” and meets the
34 definition of deliver. In the case of an electronic record, “deliver” means the transmission by
35 electronic means to the electronic mail address of the recipient.

36
37 Under Section 3(a)(9), “Electronic certificate of title” designates a certificate of title that
38 meets all requirements in the definition of a certificate of title and is only in electronic form. *See*
39 *also* Sections 11 and 14 (distinguishing between a certificate of title and other information in the
40 files of the office). This definition is modeled somewhat on the UCC Article 9 definition of
41 “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. The result is that some provisions apply only to written certificates of title, some apply
2 only to electronic certificates of title, and some apply to both. *See, e.g.*, Sections 16, 18, 19, 20-
3 23; and the definition of “written certificate of title” at Section 3(a)(36).

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

7
8 The definition of “Lessee in ordinary course of business” and at Section 3(a)(14) and
9 “Lien creditor” at Section 3(a)(15) are taken largely from UCC Sections 2A-103(1)(u) and 9-
10 102(a)(52), for purposes of consistency with the UCC.

11
12 The definition of “Manufacturer” at Section 3(a)(16) includes a later-stage manufacturer,
13 *e.g.*, a manufacturer that completes vehicles by installing or modifying vehicle body on a chassis
14 manufactured by another manufacturer.

15
16 The definition of “Owner” at Section 3(a)(18) means a person with ownership of an
17 interest in the legal title to a vehicle. It does not include an equitable or beneficial ownership
18 interest. An owner has an ownership interest in the vehicle. If there are multiple ownership
19 interests, the term “owner” can include any or all such interests.

20
21 The definition of “Person” at Section 3(a)(20) is derived from UCC Article 1 Section 1-
22 201(b)(27), for purposes of consistency with the UCC. The list is illustrative, not exclusive.
23 Another example would be the trustee of a statutory trust.

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

34
35 The terms “Transfer” and “Transferee” at Section 3(a)(32) and (33) denote any
36 conveyance of an interest, whether voluntary or by operation of law, in contrast to a “purchase,”
37 which denotes a voluntary conveyance. Again this distinction is drawn from the UCC.

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

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

This [act] contemplates the filing of written and electronic security-interest statements to perfect security interests (Sections 25 and 26), and written and electronic documentation of other records, including security interests and title searches, without or without a written certificate of title, based on the discretion, budget, and files of the state certificate of title agency (designated herein the office). *See, e.g.*, Sections 15-20. 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 can mean either a written or electronic certificate of title. An electronic certificate of title is a certificate of title being maintained solely in electronic form, in the files of the office; a written certificate of title is one that exists solely in written form. Note again that, unless stated otherwise (as in Section 4(a)), “certificate of title” means one created by the office in this state.

The definition of “Sign” at Section 3(a)(28) is derived from the definition of “signed” in UCC Article 1 Section 1-201(b)(37) 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)(30) relates to the termination of a security-interest statement under Section 27. In addition, the debtor can terminate a security-interest statement in limited circumstances under Section 23. *See also* Sections 25 and 26.

“Specialized mobile equipment,” as that term is used in Section 3(a)(34)(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 not a definition, in Article 9 “Location of debtor” is governed by Section 9-307. For purposes of this [act], the location of the debtor is determined under Section 9-307.

1 **SECTION 4. LAW GOVERNING VEHICLE COVERED BY CERTIFICATE OF**
2 **TITLE OR CERTIFICATE OF ORIGIN.**

3 (a) In this section, “certificate of title” means a certificate of title created by a
4 government agency of any state.

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

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

13 (d) A vehicle ceases to be covered by a certificate of title at the earlier of the time
14 the certificate of title ceases to be effective under the law of the state pursuant to which it was
15 created, or the time the vehicle becomes covered subsequently by another certificate of title.

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

21 (2) in the absence of an agreement effective under paragraph (1), the
22 rights and obligations of the parties are determined by the law that would apply under this state’s

1 choice-of-law principles.

2 3 Preliminary Comments 4

5 Subsections (b) and (c) are derived from UCC Section 9-303. One purpose of this [act] is
6 to conform to and avoid conflicts with the UCC.
7

8 The language of Section 9-303 has been revised in subsections (b) and (c) to limit the
9 application of this [act] to “vehicles” (as defined in Section 3(a)(34)) rather than applying to
10 “goods” as in Article 9 Section 9-303. This reflects the limitation of this [act] to vehicles. *See,*
11 *e.g.,* Section 3(a)(4), (5), (18), (34), and Sections 9-11, and 15. Other deviations from Section 9-
12 303 were also necessary, but the language of subsections (b) and (c) tracks Section 9-303 as
13 closely as possible.
14

15 As a result of the definitions at Section 3, and the scope and choice of law provisions at
16 Section 4, this Act applies to any “vehicle” that is “covered” by a “certificate of title” “created”
17 by the office in this state. If the vehicle is not covered by a certificate of title, an agreement
18 otherwise effective under subsection (e)(1) is not effective to the extent that application of the
19 law of the chosen jurisdiction would be contrary to a fundamental policy of the jurisdiction
20 whose law would govern under subsection (e)(2). In the absence of an agreement that is effective
21 under subsection (e)(1), if a vehicle is not covered by a certificate of title and a certificate of
22 origin has not been created for the vehicle, the rights and obligations of the parties with an
23 interest in the vehicle are determined by the law that would be selected by application of this
24 state’s conflict-of-laws principles.
25

26 Note that in some circumstances a transaction involving a vehicle may be governed by
27 this Act even though no certificate of title has been created. For example, the office may
28 assemble and maintain files indicating information about a vehicle, under Sections 13 and 14,
29 without creating a certificate of title or receiving an application for a certificate of title. In
30 addition, the office may receive a security-interest statement pursuant to Section 25, and thereby
31 allow perfection of a security interest pursuant to Section 26, if there is no certificate of title
32 created by a governmental agency of any state that triggers a contrary choice of law under
33 Section 4 of this [act] and Article 9 Section 9-303. Section 4 is designed to be consistent with
34 Section 9-303 in this respect. For example, if the vehicle is registered only with an Indian tribe
35 in this State, and that tribe does not have a certificate of title statute within the meaning of Article
36 9 Section 9-102(a)(10), the vehicle is not covered by a certificate of title under Section 4 and
37 Section 9-303, and can be brought within the scope of this Act by receipt of a security-interest
38 statement under Section 25. *See also* Article 9 Section 9-311(a)(2) (Article 9 deference to state
39 certificate of title statute).
40

41 A vehicle becomes covered by a certificate of title when an application and any required
42 fees are delivered to the office in accordance with the requirements of this [act]. *See* Sections 9

1 and 10. At that time this [act] will apply to all issues relating to the certificate of title or
2 otherwise governed by this [act]. *See also* Sections 25, 26, and 27 regarding the effect and
3 termination of a security-interest statement. The priority of the security interest would be
4 determined under Article 9. *See, e.g.,* Sections 9-322, 9-337. Section 4 provides choice of law
5 rules to establish the applicability of Sections 6-12 and 15-24.

6
7 **Definitional Cross Reference:**

8
9 “Certificate of title.” Section 3(a)(5).

10
11 “Security-interest Statement.” Section 3(a)(27).
12

13 **SECTION 5. EXCLUSIONS.** Unless the vehicle is covered by a certificate of title, this
14 [act] does not apply to a vehicle owned by the United States, a state, or a foreign government, or
15 a political subdivision thereof.

16 **Preliminary Comments**

17
18 This section is derived from the Uniform Motor Vehicle Certificate of Title and Anti-
19 Theft Act of 1955 (UMVCT) Section 2. UMVCT Section 2 additionally provides specific
20 exclusions for construction equipment, farm equipment, golf carts, boat trailers, and the like.
21 These have been removed from UCOTA Section 5, as redundant in view of the definition of
22 “vehicle” at Section 3(a)(32).
23

24 Note that the term “state” is defined at Section 3(a)(29) and includes, *e.g.*, federally
25 recognized Indian tribes.
26

27 **SECTION 6. VEHICLE IDENTIFICATION NUMBER, MAKE, AND MODEL**
28 **YEAR.** For a vehicle covered by a certificate of title, the office shall indicate in its files the
29 vehicle identification number, make, and model year, if any, assigned by its chassis manufacturer
30 or importer. If a vehicle identification number, make, or model year has not been assigned, the
31 office shall assign a vehicle identification number, make, or model year and indicate the
32 assignment in its files.

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SECTION 7. EXECUTION OF CERTIFICATE OF ORIGIN.

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

(b) Unless a certificate of title created by a governmental agency of any jurisdiction is delivered to the buyer, if a written certificate of origin or equivalent evidence of ownership is required by the office to obtain a certificate of title, a buyer may require that the buyer's transferor execute to the buyer a written certificate of origin or provide equivalent evidence of ownership sufficient to satisfy the requirements of the office.

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

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

1 “Later stage manufacturer” is a term sometimes used to describe a purchaser to which
2 ownership of vehicle is transferred for further manufacture, including fabrication, assembly, or
3 other completion. A later stage manufacturer is within the definition of “manufacturer” at
4 Section 3(a)(16), *e.g.*, as that term is used in Section 7(a).
5

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

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

20 As an alternative, the buyer may apply for a certificate of title under Section 23.
21

22 **Definitional Cross Reference:**

23
24 “Buyer.” Section 3(a)(1).
25

26 “Create.” Section 3(a)(6).
27

28 “Deliver.” Section 3(a)(7).
29

30 “Execute.” Section 3(a)(11).
31

32 “Sign.” Section 3(a)(26).
33

34 “Transfer.” Section 3(a)(32).
35

36 “Transferee.” Section 3(a)(33).
37

38 **SECTION 8. CANCELLATION AND REPLACEMENT OF CERTIFICATE OF** 39 **ORIGIN.**

40 (a) If a written certificate of origin is created to replace an electronic certificate of

1 origin, the electronic certificate of origin is canceled and replaced by the written certificate of
2 origin. The office shall indicate the cancellation in its file.

3 (b) If an electronic certificate of origin is created to replace a written certificate of
4 origin, the written certificate of origin must be canceled. The office shall indicate the
5 cancellation on the face of the written certificate of origin.

6 **Preliminary Comments**

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

15 **SECTION 9. APPLICATION FOR CERTIFICATE OF TITLE.**

16 (a) Except as otherwise provided in Sections 21 and 22, only the owner of a
17 vehicle may make application for a certificate of title covering the vehicle.

18 (b) An application for a certificate of title must be signed by the applicant and
19 must contain:

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

22 (2) the vehicle identification number;

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

25 (4) an indication of all security interests in the vehicle known to the
26 applicant and, if the application includes a direction to terminate a security-interest statement, the

1 information required for sufficiency of a security-interest statement under Section 25(a) and the
2 secured party's name and address for receiving communications;

3 (5) any title brand known to the applicant and, if known, the jurisdiction
4 whose governmental agency created the title brand;

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

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

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

14 (d) Except as otherwise provided in Section 22 or 23, if an application for a
15 certificate of title includes an indication of a transfer of ownership, the application must be
16 accompanied by all existing certificates of origin and any certificate of title created by a
17 governmental agency of any jurisdiction covering the vehicle, which have been executed to the
18 applicant or are known to the applicant. Except as otherwise provided in Section 23, if an
19 application includes a direction to terminate a security-interest statement, the application must be
20 accompanied by a termination statement.

21 (e) Except as otherwise provided in Section 24, if an application for a certificate
22 of title does not include an indication of a transfer of ownership or a direction to terminate a

1 security-interest statement, the application must be accompanied by all existing certificates of
2 origin and any certificate of title created by a governmental agency of any jurisdiction covering
3 the vehicle, which are known to the applicant and evidencing the applicant as owner of the
4 vehicle.

5 (f) If the applicant does not know of any existing certificate of origin or certificate
6 of title created by a governmental agency of any jurisdiction covering the vehicle, the applicant
7 shall include in the application for a certificate of title all existing records and other information
8 of the vehicle's ownership known to the applicant. Information submitted under this subsection
9 is part of the application for the certificate of title and must be indicated in the files of the office.

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

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

16 Preliminary Comments

17
18 Only the owner of the vehicle may be the applicant under Section 9. Normally this will
19 be a transferee applying to become the owner of record. Thus the applicant will be the owner but
20 not yet the owner of record. The applicant's name need not be precise or determined in
21 accordance with UCC Article 9 Section 9-503. The effect of errors or omissions is governed by
22 Section 20.

23
24 This section provides the basic requirements for an application for a certificate of title. It
25 is supplemented by Sections 16-24, which provide separate requirements for certain specified
26 circumstances, *e.g.*, an application under Section 24 for a replacement certificate of title when the
27 previous certificate of title has been lost, stolen, or destroyed.
28

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 this State. 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. The NHTSA has indicated that an electronic disclosure containing
25 the proper information may satisfy the federal written disclosure requirement at 49 C.F.R.
26 Section 580.7 for a lessee-to-lessor transfer. This requirement is similar but not identical to the
27 written disclosure requirement for other transfers, *e.g.*, at 49 C.F.R. Section 580.5, and therefore
28 may provide some indication that an electronic disclosure could satisfy the federal requirement
29 for a “writing.” *See* letter to Edwin E. Huddleson, II, General Counsel, American Automobile
30 Leasing Association, from Jacqueline Glassman, Chief Counsel, National Highway Traffic
31 Safety Administration (April 25, 2003). This is consistent with the federal Electronic Signatures
32 in Global and National Commerce Act (ESIGN), Pub. L. 106-229 (June 30, 2000), codified at 15
33 U.S.C. § 7001 *et seq.*
34

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

38 **SECTION 10. CREATION AND CANCELLATION OF CERTIFICATE OF** 39 **TITLE.**

40 (a) Unless an application for a certificate of title is rejected under subsection (c),

1 the office shall create a certificate of title upon receipt of an application that complies with
2 Section 9 and payment of all taxes and fees.

3 (b) Upon request of the secured party of record, the office shall create a written
4 certificate of title or, if the office is authorized to do so, an electronic certificate of title. If no
5 security interest is indicated in the files of the office, the owner of record may have the office
6 create a written certificate of title or, if the office is authorized to do so, an electronic certificate
7 of title. If no request is made by an owner of record or secured party, the office may create a
8 written certificate of title or, if authorized to do so, 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 of this state other than this
14 [act].

15 (d) If the office has created a certificate of title, it may cancel the certificate of
16 title only if it could have rejected the application under subsection (c). The office shall provide
17 an opportunity for a hearing at which the applicant and any other interested party may present
18 evidence in support of or opposition to the application. The office shall serve the notice of the
19 opportunity in person or send it by regular mail to the applicant, the owner of record, and all
20 secured parties indicated in the files of the office. If the applicant or any other interested party
21 requests a hearing within [10] days after receiving the notice, the office shall hold the hearing not
22 fewer than [20] days after receiving the request.

Preliminary Comments

See also the standards for delivery of a certificate of title in Section 15. The determination of the secured party of record, defined at Section 3(a)(25) 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 25 and 26. Rejection of an application, or cancellation of a certificate of title, affects only the applicant's ownership and does not alter the receipt or effect of a security-interest statement under Sections 25 and 26 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, 23, or 24. 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 a 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 a 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) A certificate of title must contain:

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

(2) except as otherwise provided in Section 26(b), the name and address

of any secured party of record and an indication of whether there are additional security interests indicated in the files of the office or on a record created by a governmental agency of any jurisdiction and submitted to the office;

(3) all title brands covering the vehicles, including brands previously

1 indicated on a certificate of origin or certificate of title created by a governmental agency of any
2 jurisdiction which are known to the office; and

3 (4) the information required under Section (9)(b).

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

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

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

16 Preliminary Comments

17
18 “Title brand” is defined in Section 3(a)(30). *See also* Section 9(b)(5), requiring any
19 known title brand to be included in the application for a certificate of title. Any title brand
20 indicated on the certificate of title should be described using plain language or common
21 abbreviations, not codes or symbols, so as to be readily understandable in any state.
22

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

1 contentious.

2
3 Under this [act], other law of this or another state will determine if a title brand is
4 required. If a title brand is required, this [act] requires the use of words or abbreviations rather
5 than symbols to denote the title brand. Once a title brand is required, this [act] requires that the
6 title brand be indicated on the face of the certificate of title and all subsequent certificates of title
7 created for the vehicle by the office. Additionally, once a title brand is required, the title brand of
8 one state must be “carried forward” on a certificate of title subsequently issued by any other state
9 with respect to the vehicle.
10

11 **SECTION 12. EFFECT OF POSSESSION OF VEHICLE ON CERTIFICATE OF**
12 **TITLE, CERTIFICATE OF ORIGIN, AND JUDICIAL PROCESS.** A certificate of title
13 created by a governmental agency of any jurisdiction or a certificate of origin does not by itself
14 provide a means to obtain possession of a vehicle. Garnishment, attachment, levy, replevin, or
15 other judicial process against the certificate of title or a certificate of origin is not effective to
16 determine possessory rights with respect to the vehicle. However, this [act] does not prohibit
17 enforcement of a security interest in, levy on, or foreclosure of a statutory or common-law lien on
18 a vehicle under law of this state other than this [act]. The absence of an indication of a statutory
19 or common-law lien on a certificate of title does not invalidate the lien.

20 **Preliminary Comments**

21
22 This section is derived from Section 9 of the UMVCT. It makes clear that enforcement of
23 a lien by judicial process must be effected against the vehicle, not the certificate of title.
24 However, this section does not relieve a person of any duty under this [act] or law other than this
25 [act] or preclude any remedies in personam. For example, this section does not bar mandatory
26 injunctive or other in personam relief against a person wrongfully withholding a certificate of
27 title, *e.g.*, a turn-over order following a successful replevin action. In addition, if a certificate of
28 title is being wrongfully withheld by a third party, there may be a remedy under Sections 16-23. For
29 example, a lien creditor or other secured creditor could seek possession of the vehicle using legal
30 process, and then obtain a certificate of title under Section 21 or 23; a buyer whose seller
31 wrongfully fails to execute the certificate of title can obtain a new title under Section 22.
32

33 This section relates to possession of the vehicle and the effect of legal process. It applies

1 to all vehicles within this state, and subject to this process, even if the vehicle is covered by a
2 certificate of title created by a governmental agency of another jurisdiction. Thus, the scope of
3 this section is not limited by Section 4 of this [act].
4

5 **SECTION 13. OTHER INFORMATION.**

6 (a) The office may accept a submission of information relating to a vehicle for
7 indication in the files of the office, even if the requirements for a certificate of title, an
8 application for a certificate of title, a security-interest statement, or a termination statement have
9 not been met.

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

13 (c) The office may require the submission of information relating to a vehicle
14 required for payment of taxes or for issuance or renewal of license tags.

15 (d) The office may require a person submitting information under this section to
16 provide a bond in a form and amount determined by the office. A bond must provide for
17 indemnification of any secured party or other interested party against any expense, loss, or
18 damage resulting from indication of the information in the files of the office.

19 (e) A submission of information under this section and its indication in the files
20 of the office is not a certificate of title, an application for a certificate of title, a security-interest
21 statement, or a termination statement and does not provide a basis for transferring or determining
22 ownership of a vehicle or the effectiveness of a security-interest statement.
23

Preliminary Comments

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

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

This section does not relate to or affect a certificate of title. It applies to any vehicle within this State or owned by a resident of this state, even if the vehicle is covered by a certificate of title created by a governmental agency of another state. Thus, the scope of this section is not limited by Section 4 of this [act].

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

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

SECTION 14. MAINTENANCE OF AND ACCESS TO FILES.

(a) For each record relating to a certificate of title submitted to the office, the office shall:

1 (1) pursuant to Section 6, ascertain or assign the vehicle identification
2 number, make, and model year of the vehicle to which the record relates;

3 (2) indicate in the files of the office the vehicle identification number,
4 make, and model year of the vehicle to which the record relates and the information in the record,
5 including the date [and time] the record was delivered to the office;

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

7 (4) index the files of the office so as to be accessible by the vehicle
8 identification number for the vehicle and any other indexing methods used by the office.

9 (b) The office shall indicate in the files of the office the information contained in
10 all certificates of title created under this [act]. The files of the office must be accessible by the
11 vehicle identification number for the vehicle covered by the certificate and any other indexing
12 method used by the office.

13 (c) The files of the office maintained under this section must indicate all title
14 brands and include stolen-property reports and security-interest statements relating to the vehicle
15 and the name or names of any secured party and claimant to ownership, known to the office.

16 [(d) Except as otherwise provided by law of this state other than this [act], the
17 information required under Section 11 is a public record. Whether other information in the files
18 of the office is made available to the public is governed by law of this state other than this [act].]

19 ***Legislative Note:*** *A state with separate public records laws governing disclosure of personal*
20 *information should cross-reference those laws at subsection (d). A state without such a law to*
21 *govern these files should enact the optional language at subsection (d) to distinguish between*
22 *private and public information.*
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The office is required to accept each application for a certificate of title that is submitted in accordance with Section 9 and, if the files of the office indicate that all security-interest statements have been terminated, to create a written or electronic certificate of title, at the option of the owner in accordance with this [act]. *See* Sections 9-11, 15, 21-23, and 27.

SECTION 15. DELIVERY OF CERTIFICATE OF TITLE.

(b) Within a reasonable time not to exceed [15] business days after receipt of a request that a written certificate of title be created and delivered pursuant to subsection (a), the

1 office shall create the certificate and deliver it to the person making the request.

2 (c) If a written certificate of title is created, any electronic certificate of title is
3 canceled and replaced by the written certificate of title. The cancellation must be indicated in the
4 files of the office with an indication of the date [and time] of cancellation.

5 (d) Before an electronic certificate of title is created, any existing certificate of
6 title must be surrendered. If an electronic certificate of title is created, any existing written
7 certificate of title that has been surrendered to the office must be destroyed or otherwise
8 canceled, with an indication in the files of the office of the date [and time] of cancellation. If the
9 written certificate of title being canceled is not destroyed, the cancellation must be indicated on
10 the face of the written certificate of title.

11 Preliminary Comments

12
13 Derived from UMVCT Section 10. *See also* Section 8. As discussed below, this
14 provides a “title holding” system allowing the secured party of record to hold any written
15 certificate of title. While this is consistent with existing law in most states, it represents a change
16 in a minority of states. Section 9 (Application for a Certificate of Title) provides for optional use
17 of an e-mail address, to be used for delivery of electronic records.

18
19 An electronic certificate of title consists solely of a record in the files of the office. *See*
20 Section 3(a)(5), (10). It is not delivered to any other party; however, a record evidencing the
21 electronic certificate of title is to be sent under Section 15(a) to the secured party of record or
22 owner. This evidence may be used by secured parties and/or the owner in negotiating and
23 documenting subsequent transactions, but the electronic certificate of title is not affected until
24 there is an application under Section 9. *See also* Section 16.

25
26 The determination by the office of the secured party, as required under this section, is an
27 administrative determination for purposes of this section and is not dispositive of priority issues
28 governed by UCC Article 9. The secured party of record, if any, may elect to have the office
29 create a written certificate of title. The owner of record also may make such an election but only
30 if no secured party is indicated in the files of the office.

31
32 This section does not require creation of a written certificate of title, except at the request
33 of the secured party of record or, in some circumstances, the owner; if a written certificate of title

1 is created it must be delivered to the secured party of record, if any. This is designed to make the
2 state a certificate of title “title holding” state when the option to have a written certificate of title
3 is exercised. However, while “title holding” of written certificates of title may be useful for anti-
4 fraud purposes, it also may create delays for subsequent purchasers who need the certificate of
5 title to perfect a new security interest or otherwise execute a subsequent transaction. Under the
6 U.S. Supreme Court’s interpretation of the Bankruptcy Code in *Fidelity Financial Services v.*
7 *Fink*, 522 U.S. 211 (1998), such delays may be legally fatal. This section allows the owner to
8 request creation of a written certificate of title to facilitate subsequent transactions, if all security
9 interests have been terminated. If the vehicle is subject to a perfected security interest, this
10 section does not allow the owner to require the office to create a written certificate of title.
11 However, this does not interfere with the owner’s ability to refinance a prior secured credit
12 transaction, as Sections 25 and 26 allow perfection of a new security interest by filing a security-
13 interest statement, without submission of the certificate of title to the office. A secured party can
14 refinance a prior loan or credit sale, and perfect a new security interest in a timely manner for
15 purposes of the Bankruptcy Code, 11 U.S.C. § 547(c)(1) or (3), without the certificate of title,
16 then pay off the prior creditor and await the prior creditor’s release of any written certificate of
17 title, without risk of attack under the Bankruptcy preference rules. This illustrates the importance
18 of allowing subsequent parties to search for and file security-interest statements without
19 otherwise having access to the certificate of title. See Sections 25-26.

20
21 So long as this [act] applies, a security interest may be perfected under Sections 25 and
22 26, regardless of who holds the certificate of title. This [act] applies if the vehicle is covered by a
23 certificate of title in this State under Section 4(b) or, if the vehicle is not covered by a certificate
24 of title created by a governmental agency of any state, if this [act] applies, pursuant to the choice
25 of law rules of this State. This [act] ceases to apply when a valid application for a certificate of
26 title created by a governmental agency of any state is subsequently made in another state under
27 Section 4 and Article 9 Section 9-303.

28
29 Upon a proper request, the office must create and deliver a written certificate of title
30 within a reasonable period, not to exceed a maximum specified limit to be determined by each
31 state. Fifteen days is recommended as a customary period[, consistent with the UMVCT].
32

33 **SECTION 16. TRANSFER.**

34 (a) Upon sale of a vehicle covered by a certificate of title, a person authorized to
35 execute the certificate of title, as promptly as practicable and in compliance with this [act] and
36 law of this state other than this [act], shall execute the certificate to the buyer or deliver to the
37 office a signed certificate of title or a record evidencing execution of an electronic certificate of

1 title to the buyer. The buyer of a vehicle covered by a certificate of title has a specifically
2 enforceable right to require the seller to execute the certificate of title to the buyer or deliver to
3 the office a signed certificate of title or a record evidencing transfer of an electronic certificate of
4 title indicating transfer of the certificate of title to the buyer.

5 (b) Execution of a certificate of title created by a governmental agency of any
6 jurisdiction satisfies the requirement in subsection (a).

7 (c) Execution of a certificate of title created by a governmental agency of any
8 jurisdiction or a certificate of origin transfers the transferor's ownership to the transferee.

9 (d) As between the parties to a transfer and their assignees and successors, a
10 transfer of ownership is not rendered ineffective by a failure to execute a certificate of title or
11 certificate of origin as provided in this section. However, except as otherwise provided in
12 Section 18 (b) and (c), 19, 21, or 22, a transfer of ownership without execution of a certificate of
13 title or certificate of origin is not effective as to other persons claiming an interest in the vehicle.

14 (e) Before an agreement to transfer ownership by an electronic certificate of title
15 is made or any consideration for the transfer is paid, and before a record evidencing a transfer of
16 an electronic certificate of title is executed to the transferee or delivered by the transferor to the
17 office, the transferor shall deliver to the transferee a signed record containing the information
18 required for an application in Section 9(b), and the transferee shall deliver to the transferor a
19 signed record acknowledging receipt of the information. The transferee has a specifically
20 enforceable right to receive this information before any consideration is paid. The record
21 delivered to the office must indicate that these requirements have been met.

22 [(f) After execution of the certificate of title and delivery of possession of the

1 vehicle to the transferee, the transferor is not liable as owner for any damages resulting from
2 operation of the vehicle even if the transferee fails to make application for a new certificate of
3 title reflecting the transfer.]

4 **Preliminary Comments**

5
6 Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers of
7 ownership to vehicles covered by a certificate of title. Subsection (c) makes clear that the
8 transferor's ownership is transferred upon execution of the certificate of title or a certificate of
9 origin, even though an application for a new certificate of title has not been made. A certificate
10 of title is evidence of this ownership. *See* Section 3(a)(5). Subsection (d) clarifies that
11 ownership of vehicle covered by a certificate of title also may be transferred without the
12 certificate of title, though such transfers are not effective as to third parties claiming an interest in
13 the vehicle except as provided in Section 18 or 19, *e.g.*, with respect to the rights of a good faith
14 purchaser for value or a buyer in ordinary course of business. *See also* Sections 20-23. For
15 example, rights under Section 16(d) are subject to claims asserted under Section 18(b) or 19(b).
16

17 This [act] is supplemented by otherwise applicable law, for example the law of agency.
18 *See* Section 2. Therefore the obligations and rights recognized in this section can be exercised by
19 authorized representatives of the transferor and transferee. *See also* Section 26(b).
20

21 Section 16(a) provides the buyer a right to execution of the certificate of title upon sale of
22 the vehicle. Subsection (c) provides that execution of the certificate of title constitutes a transfer
23 of ownership. After execution of the certificate of title the transferor is no longer the vehicle
24 owner, *e.g.*, for purposes of financial responsibility laws. Subsection (d) recognizes that
25 ownership can also be transferred by other means, *e.g.*, by a contract or bill of sale; such transfers
26 are not invalidated by this [act] or the failure to execute a certificate of title, though such
27 transfers may be ineffective against other persons claiming an interest in the vehicle (*e.g.*, a
28 secured creditor of the transferor) or a purchaser or buyer under Section 18 or 19.
29

30 This section and Sections 18-20 govern the rights of the parties to transfers of legal title.
31 Except as noted above, the rights and priorities of other parties, including secured parties and lien
32 creditors, are governed elsewhere in this [act] and by other law. For example, the priorities of
33 Article 9 security interests are governed by Article, though perfection may be governed by
34 Sections 25 and 26.
35

36 *See also* the rights of purchasers and buyers under Sections 18 and 19. Section 19
37 specifies that a transferee that does not obtain execution of the certificate of title takes subject to
38 interests indicated on the certificate, except in certain cases where the transferee is a buyer in
39 ordinary course of business. Thus Section 16(d) is subject to Section 19.
40

SECTION 17. NOTICE OF TRANSFER WITHOUT APPLICATION. A transferee or transferor, in accordance with standards and procedures established by the office, may deliver a signed record to the office giving notice of the transfer, to indicate its ownership or lack of ownership, without filing an application for a certificate of title. The record may indicate the transfer of ownership between the transferor and transferee. The record is not a certificate of title and is not effective as to other persons claiming an interest in the vehicle. This notice does not relieve any party of any obligation under Section 9 or 16.

Preliminary Comments

This section provides a basic legal framework for providing notice of ownership transfers to the office, without application for or execution of a certificate of title and evidence. This allows a transferor to document its non-ownership of a vehicle. This is intended to supplement Sections 9, 10, 13, 16, and (as relevant) Sections 21-23. For example, one purpose is to allow a transferor or transferee to provide notice of the transfer to the office without meeting the requirements for an application under Section 9. Under Section 16, a transfer of ownership may occur without notice to the office. This section allows either the transferor or the transferee to provide that notice even if the requirements for an application under Section 9 have not been met.

This notice procedure is not a substitute for an application for a certificate of title pursuant to Section 9. A record submitted or files of the office created pursuant to this section are not a certificate of title or an application for or execution of a certificate of title. In order for a certificate of title to be created pursuant to Section 10, reflecting the transfer, the transferee of the vehicle must submit to the office the signed certificate of title or other signed record evidencing the transfer, and the information required by Sections 9 and 16, or any other documentation required by the office in accordance with Sections 21-23, as applicable, including submission of any required fee and tax. This section merely provides a mechanism for providing notice to the office for informational purposes, for whatever purposes the office, or the transferor or transferee, may 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(d) (legal title may pass without a 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.

1 **SECTION 18. POWER TO TRANSFER.**

2 (a) A purchaser of a vehicle acquires all title that the purchaser's transferor had or
3 had power to transfer except that a purchaser of a limited interest acquires rights only to the
4 extent of the interest purchased. A person with voidable title has power to transfer a good title to
5 a good-faith purchaser for value. If a vehicle has been delivered under a transaction of purchase,
6 the purchaser has such power even if:

- 7 (1) the transferor was deceived as to the identity of the purchaser;
8 (2) the delivery was in exchange for a check that is later dishonored;
9 (3) it was agreed that the transaction was to be a "cash sale"; or
10 (4) the delivery was procured through criminal fraud.

11 (b) Any entrusting of a vehicle to a merchant that deals in goods of that kind
12 gives the merchant power to transfer all of the entrustor's rights to the vehicle and to transfer the
13 vehicle free of any interest of the entrustor to a buyer in ordinary course of business or, to the
14 extent of the lessee's interest, to a lessee in ordinary course of business, even if a certificate of
15 title is not executed to the buyer or lessee. In this subsection, "entrusting" includes any delivery
16 and any acquiescence in retention of possession regardless of any condition expressed between
17 the parties to the delivery or acquiescence and regardless of whether the procurement of the
18 entrusting or the possessor's disposition of the goods was punishable under the criminal law.

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

21 (d) Except as otherwise provided in Section 16, the rights of other purchasers of
22 vehicles and of lien creditors are governed by [Uniform Commercial Code Articles 2, 2A, [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* UCC 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 18-23 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 Section 18(b), a transferee of ownership takes subject to:

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

(b) If, while a security interest in a vehicle is perfected by any method under the law of any jurisdiction, the office creates a written certificate of title that does not indicate that the vehicle is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate, a buyer of the vehicle, other than a person in the

1 business of selling or leasing goods of that kind, takes free of the security interest if the buyer:

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

4 (2) does not have knowledge of the security interest in the vehicle.

5 (c) A buyer in ordinary course of business takes free of a security interest in the
6 vehicle, including a security interest indicated on a certificate of title, created by the buyer's
7 seller, even if the security interest is perfected, the buyer knows of its existence, and the
8 certificate of title was not executed to the buyer. A lessee in ordinary course of business takes its
9 leasehold interest free of a security interest in the vehicle, including a security interest indicated
10 on a certificate of title, created by the lessee's lessor, even if the security interest is perfected, the
11 lessee knows of its existence, and the certificate of title was not executed to the lessee. This
12 subsection does not affect a security interest in a vehicle in the possession of the secured party
13 under [Uniform Commercial Code Article 9].

14 (d) If, while a security interest in a vehicle is perfected by any method under the
15 law of any jurisdiction, the office creates a written certificate of title that does not indicate that
16 the vehicle is subject to the security interest or contain a statement that it may be subject to
17 security interests not indicated on the certificate, the security interest is subordinate to a
18 conflicting security interest in the vehicle which is perfected after creation of the written
19 certificate of title and without the conflicting secured party's knowledge of the security interest.

20 Preliminary Comments

21
22 Subsection (a) and Section 18(a) state the basic common law rule of assignment, which
23 also runs throughout the UCC: The transferee takes the rights of the transferor, *e.g.*, subject to
24 security interests as indicated on the certificate of title. Subsection 19 (a) also reflects the Article

1 9 principle that rights under the certificate of title are paramount. *See, e.g.*, Article 9 Sections
2 9-311, 9-335, 9-337, 9-338. This represents the base line rule, with subsection (b) stating a
3 corollary: A buyer who takes by execution of a certificate of title and meets the other
4 requirements of subsection (b) takes free of security interests not indicated on the certificate of
5 title. Subsection (c) then provides an exception, allowing a buyer in ordinary course to take free
6 of security interests indicated on the certificate of title or otherwise perfected, even if the buyer
7 has knowledge of the security interest and the certificate of title is not executed. *See also*
8 Sections 16-18, 20-23, and 25-27; UCC Article 2A Section 2A-304 and Official Comment.

9
10 Subsection (b) is patterned on UCC Article 9 Section 9-337, but with important
11 differences: Subsection (b) applies to intrastate sales, while Section 9-337 applies only to
12 interstate scenarios; unlike Section 9-337, subsection (b) allows a purchaser to take free of a
13 security interest properly perfected in the same state (though only if it is not indicated on a
14 written certificate of title executed to the buyer). However, subsection (b) also imposes
15 requirements on the buyer not found in Section 9-337: Execution of the certificate of title and
16 good faith (along with the requirements of value, delivery, and a lack of knowledge also found in
17 Section 9-337). These requirements assure that only an innocent purchaser will qualify for the
18 exceptional protection provided by this section.

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

29
30 Subsection (c) recognizes an exception for a buyer in ordinary course of business
31 (BIOCOB), based on Article 9 Section 9-320. Section 9-320 cuts off security interests created by
32 the seller. Subsection (c) recognizes and incorporates this Article 9 provision in the context of a
33 certificate of title transaction, and specifies that a buyer of vehicle can be a BIOCOB even if that
34 person does not obtain a certificate of title. *See also* UCC Sections 2A-304, 2A-305. But this
35 buyer does not prevail if the vehicle is in the possession of the secured party. *See also* UCC
36 Section 9-320(e).

37
38 The result of subsection (c) is to allow the BIOCOB of a vehicle covered by a certificate
39 of title to take free of claims and security interests created by the seller (*e.g.*, an inventory
40 security interest created by an auto dealer who sells the vehicle to a BIOCOB), even if the
41 secured party holds the certificate of title; but, like Section 9-320, subsection (c) does not allow
42 the BIOCOB to take free of a security interest created by a consignor to the dealer that sold the
43 vehicle, if the security interest is perfected under this act, because that is not a security interest

1 created by the seller, unless the consignor and dealer/consignee are the same or are so closely
2 connected as to be treated as the same entity. This reflects long-standing UCC policy that even a
3 BIOCOB only takes free of security interests created by his or her seller, not security interests
4 created by other or prior parties. *But see* Section 18(b) (the entrustment rule) for buyer remedies
5 in a consignment scenario.
6

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

17 **SECTION 20. EFFECT OF OMISSION OR INCORRECT INFORMATION.**

18 (a) Except as otherwise provided in this section, a certificate of title, certificate of
19 origin, security-interest statement, or other record required or authorized by this [act] is effective
20 even if it contains incorrect information or does not contain required information.

21 (b) In addition to any rights provided under Section 18 or 19, if a certificate of
22 title, certificate of origin, security-interest statement, or other record is seriously misleading
23 because it contains incorrect information or omits required information, a purchaser of the
24 vehicle to which the record relates takes free of any interest that would have been indicated in the
25 record if the correct or omitted information had been indicated, to the extent that the purchaser
26 gives value in reasonable reliance on the incorrect information or the absence of the omitted
27 information.

28 (c) Except as otherwise provided in subsection (d) or Section 25(c), a description
29 of the a vehicle, including the vehicle identification number, in a certificate of title, certificate of

1 origin, security-interest statement, or other record that otherwise satisfies the requirements of this
2 [act] is not seriously misleading, even if not specific and accurate, if the description reasonably
3 identifies the vehicle.

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

9 Preliminary Comments

10
11 Often a certificate of title, certificate of origin, security-interest statement, or other record
12 that fails to state accurately the name and address of the owner, the name and address of the
13 secured party, or the description of the vehicle, is not seriously misleading solely for that reason,
14 because the written certificate of title (or information indicated in the electronic certificate of
15 title) is provided to the purchaser or secured party by the owner, the relevant correct or sufficient
16 information is easily ascertainable, and the error causes no injury. Minor errors of this type, *e.g.*,
17 an error in the spelling of the owner's name, are common and ordinarily harmless, and should not
18 invalidate a certificate of title or transaction. Section 20 makes clear that a certificate of title or
19 other record containing erroneous information, or omitting information, is not rendered invalid
20 by the erroneous information or omission, and is valid and effective, except to the extent that the
21 error is seriously misleading and a purchaser is misled by the erroneous information or omission
22 as provided in this section.

23
24 This section is modeled on Article 9 Sections 9-108, 9-337, 9-338, 9-502, and 9-506. As
25 noted, the purpose is to prevent harmless errors from invalidating a transaction, *e.g.*, recognizing
26 that errors in the parties' names or an error in the description of the vehicle often will not mislead
27 parties to a certificate of title transaction. This issue is different than under Article 9, where an
28 error in the debtor's name can mislead filing searches. Thus, no equivalent to Article 9
29 Section 9-506(c) is needed if the security interest is noted on a written certificate of title. For
30 other cases, subsection (d) provides a rule equivalent to Section 9-506(c).

31 32 SECTION 21. TRANSFER BY SECURED PARTY'S TRANSFER STATEMENT.

33 (a) In this section, "secured party's transfer statement" means a record signed by

1 the secured party of record stating:

2 (1) that the owner of record has defaulted on an obligation to the secured
3 party of record;

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

6 (3) that, by reason of the exercise, the secured party of record has the right
7 to transfer the rights of the owner of record;

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

9 (A) the owner of record;

10 (B) the secured party of record; and

11 (C) any other purchaser;

12 (5) any other information required by Section 9(b); and

13 (6) that the certificate of title is an electronic certificate of title, or that the
14 secured party does not have possession of the written certificate of title created in the name of the
15 owner of record, or that the secured party is delivering the written certificate of title to the office
16 with the secured party's transfer statement.

17 (b) Compliance by the secured party of record with subsection (a), and payment
18 of any applicable fees and taxes, entitles the secured party to the creation of a certificate of title
19 showing the secured party of record or other purchaser as the owner of record. If a secured
20 party's transfer statement is delivered to the office in accordance with subsection (a) with any
21 applicable fee and taxes, unless the secured party's transfer statement is rejected by the office for
22 a reason set forth in Section 10, the office shall:

- (1) accept the secured party's transfer statement;
 - (2) amend the files of the office to reflect the transfer;
 - (3) cancel the certificate of title created in the name of the owner of record listed in the secured party's transfer statement, whether or not the certificate of title has been delivered to the office;
 - (4) create a new certificate of title indicating the secured party of record or other purchaser as the vehicle's owner of record; and
 - (5) deliver the new certificate of title pursuant to Section 15.
- (c) The creation of a certificate of title under subsection (b) is not of itself a disposition of the vehicle and does not of itself relieve the secured party of its duties under [Uniform Commercial Code Article 9].

Preliminary Comments

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

This section is not mandatory. It does not require the secured party to obtain a certificate of title upon repossession or disposition. The obligation to deliver a certificate of title to a purchaser is provided by Section 16, supplemented by the remedial provisions of Section 23. The post-default rights and remedies of debtors and secured parties are governed by [Uniform Commercial Code Article 9].

SECTION 22. TRANSFER BY OPERATION OF LAW.

- (a) In this section:

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

3 (A) on account of death, divorce, merger, consolidation,
4 dissolution, or bankruptcy;

5 (B) through the exercise of the rights of a lien creditor or a person
6 having a statutory or common law lien or other nonconsensual lien; or

7 (C) through other legal process.

8 (2) “Transfer-by-law statement” means a record signed by a transferee
9 stating that, by operation of law, the transferee has acquired or has the right to acquire the
10 ownership interest of the owner of record and containing:

11 (A) the name and mailing address of the owner of record and the
12 transferee and the other information required by Section 9(b);

13 (B) documentation sufficient to establish the transferee’s interest
14 or right to acquire the ownership interest of the owner of record; and

15 (C) a statement:

16 (i) that the certificate of title is an electronic certificate of
17 title;

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

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

22 (b) If a transfer-by-law statement is delivered to the office with the fee and taxes

1 and documentation satisfactory to the office as to the transferee's ownership interest or right to
2 acquire the ownership interest of the owner of record, unless it is rejected by the office for a
3 reason set forth in Section 10, the office shall:

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

5 (2) promptly send notice to the owner of record and to all persons
6 indicated in the files of the office as having an interest, including a security interest, in the
7 vehicle that a transfer-by-law statement has been delivered to the office;

8 (3) amend the files of the office to reflect the transfer;

9 (4) cancel the certificate of title created in the name of the owner of record
10 indicated in the transfer-by-law statement, whether or not the certificate has been delivered to the
11 office;

12 (5) create a new certificate of title pursuant to Section 10, indicating the
13 transferee as owner of record; and

14 (6) deliver the new certificate of title pursuant to Section 15.

15 (c) This section does not apply to a transfer of an interest in a vehicle by a
16 secured party under [Uniform Commercial Code Article 9] or Section 21.

17 **Preliminary Comments**

18
19 This section supplements UCC Article 9 Section 9-619, though this section has a
20 different purpose and therefore diverges from the Section 9-619 language. The purpose of this
21 section is to provide a procedure to accommodate transfers of ownership due to death, divorce,
22 corporate mergers, bankruptcy, enforcement of liens, and the like. As with Section 9-619, this
23 section makes clear that it is not a substitute for a UCC Article 9 disposition of collateral. The
24 post-default rights and remedies of debtors and secured parties are governed by [Uniform
25 Commercial Code Article 9].
26

1 **SECTION 23. APPLICATION FOR TRANSFER OF OWNERSHIP OR**
2 **TERMINATION OF SECURITY-INTEREST STATEMENT WITHOUT CERTIFICATE**
3 **OF TITLE OR CERTIFICATE OF ORIGIN.**

4 (a) Except as otherwise provided in Section 21 or 22, upon receiving an
5 application that includes an indication of a transfer of ownership or a direction to terminate a
6 security-interest statement but is not accompanied by submission of a signed certificate of title or
7 certificate of origin or, as applicable, a termination statement pursuant to Section 27, the office
8 shall create a certificate of title or terminate the security-interest statement under this section only
9 if:

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

11 (2) the applicant has provided an affidavit stating facts that indicate the
12 applicant is entitled to a transfer of ownership or termination of the effectiveness of a security-
13 interest statement;

14 (3) at least 45 days before the office creates the certificate of title, the
15 office has sent notice of the application to all persons having an interest in the vehicle as
16 indicated in the files of the office and no objection from any of those persons has been received
17 by the office; and

18 (4) the applicant submits any other information required by the office to
19 evidence the applicant's ownership or right to termination of the security-interest statement, and
20 the office has no credible information indicating theft, fraud, or any undisclosed or unsatisfied
21 security interest, lien, or other claim to an interest in the vehicle.

22 (b) Unless the office determines, by any reasonable method, that the value of the

1 vehicle is less than [\$3,000], before creating a certificate of title the office may require an
2 applicant under subsection (a) to post a bond or provide an equivalent source of indemnity or
3 security, in a form prescribed by the office. The bond, indemnity, or other security must provide
4 for indemnification of any owner, purchaser, or other claimant for any expense, loss, delay, or
5 damage, including reasonable attorneys' fees but not consequential damages, resulting from
6 creation of a certificate of title or termination of a security-interest statement, but may not exceed
7 twice the value of the vehicle as determined by the office.

8 (c) If the office has not received a claim for indemnity within one year after
9 creation of the certificate of title under subsection (a), upon request in a form and manner
10 specified by the office, the office shall release any bond, indemnity, or other security.

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

17 Preliminary Comments

18
19 Derived from UMVCT Section 11. *See also* UCOTA Sections 17-19, 21-23. Section 23
20 may be used, *e.g.*, to request a certificate of title to effectuate a sale, gift, auction or judicial sale,
21 UCC Article 9 disposition sale, or other transfer where the seller, donor, or other transferor is
22 unable or unwilling to obtain or execute the certificate of title. Section 23 can also be used in
23 lieu of a termination statement under Section 27, *e.g.*, if a secured debt has been satisfied and the
24 secured party is unable or unwilling to provide a termination statement. Section 23 requires a
25 supporting affidavit, 45 days prior notice to all known interested parties, and (at the option of the
26 office): other documentation (*e.g.*, a bill of sale or sales contract and cancelled check or other
27 evidence of payment); a bond; and/or an indication on the certificate of title, as additional

1 potential safeguards to supplement the procedures at Sections 9 and 10.

2
3 This section is not for use by an owner of record seeking to replace a lost, stolen, or
4 destroyed certificate of title; that procedure is provided at Section 24. Section 24 is designed to
5 allow a replacement title to be obtained by the same owner; it does not directly involve a transfer
6 of ownership. In contrast, Section 23 provides for a transfer of title or termination of perfection
7 of a security interest where the applicant presents evidence that he or she is entitled to such a
8 transfer or termination, satisfactory to the office, and the transferor or secured party is unable or
9 unwilling to execute the certificate of title as otherwise required. The requirements and remedy
10 provided by this section are in addition to those set forth elsewhere in this [act], *e.g.*, at
11 Sections 21 and 23.
12

13 **SECTION 24. REPLACEMENT CERTIFICATE OF TITLE.**

14 (a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise
15 becomes unavailable or illegible, the secured party of record or, if there is no secured party
16 indicated in the files of the office, the owner of record may apply for and, by furnishing
17 information satisfactory to the office, obtain a replacement certificate of title in the name of the
18 owner of record.

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

22 (c) Unless it has been lost, stolen, or destroyed or is otherwise unavailable, the
23 existing written certificate of title must be submitted to the office with an application for a
24 replacement certificate of title.

25 (d) A replacement certificate of title created by the office must comply with
26 Section 11 and indicate on the face of the certificate of title that it is a replacement certificate of
27 title.

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

4 **Preliminary Comments**

5
6 Derived from UMVCT Section 13. A purchaser to whom a replacement certificate of
7 title is executed can qualify as a good faith purchaser (GFP) or BIOCOB, *e.g.*, under Section 16,
8 18 or 19, UCC Article 2 Section 2-403, and Article 9 Sections 9-320, 9-337, and 9-338, if all
9 other requirements are met. The indication of a replacement certificate of title required by
10 subsection (d) does not give notice sufficient to bar GFP or BIOCOB status.
11

12 **SECTION 25. EFFECTIVENESS OF SECURITY-INTEREST STATEMENT.**

13 (a) A security-interest statement is sufficient if it includes the name of the debtor,
14 the name of the secured party or a representative of the secured party, and a description of the
15 vehicle, and it is authorized by the debtor as if it were a financing statement authorized by the
16 debtor under the [Uniform Commercial Code.] A description of the vehicle is sufficient if it
17 reasonably identifies the vehicle and is not seriously misleading under Section 20.

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

20 (c) Subject to subsections (e) and (f), a security-interest statement is not received
21 if the office rejects the statement pursuant to subsection (e). The office may reject a security-
22 interest statement only in the manner specified in subsection (e) and only if:

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

24 (2) an amount equal to or greater than the required filing fee is not
25 tendered with the statement or within seven days after the office has notified the secured party of

1 the filing fee deficiency;

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

4 (4) the record does not contain the vehicle identification number; or

5 (5) the office cannot identify a file of the office, certificate of title, or
6 application for a certificate of title to which the security-interest statement relates.

7 (d) The office shall maintain files of the office showing the date of receipt of each
8 security-interest statement that is not rejected and shall make this information available on
9 request.

10 (e) To reject a security-interest statement, the office must send notice of rejection
11 to the person that delivered the statement, indicating the reasons for the rejection and the date the
12 statement would have been received had the office not rejected it.

13 (f) If the office does not send notice of rejection under subsection (e), the
14 security-interest statement is received as of the time it was delivered to the office. Confirmation
15 by the office that the security-interest statement has been entered in the files of the office is
16 conclusive proof that receipt has occurred.

17 (g) If a security-interest statement sufficient under subsection (a) is tendered with
18 the filing fee and the office sends a notice of rejection indicating a reason other than one set forth
19 in subsection (c), the security-interest statement is effective as of the business day on which the
20 statement was tendered to the office except as against a purchaser of the vehicle which gives
21 value in reasonable reliance upon the absence of the security-interest statement from the files of
22 the office.

(h) Failure of the office to index a security-interest statement correctly or to indicate the security interest on the certificate of title does not affect the receipt of the security-interest statement.

Preliminary Comments

This section is modeled on UCC Section 9-516. It addresses many of the same issues as Section 9-516, *e.g.*, by specifying that a security-interest statement is effective on receipt by the appropriate office and payment of the required fee, unless it is properly rejected for specified reasons. The security-interest statement is effective upon receipt and payment of applicable fees under subsection (a), if the statement is sufficient under subsection (b) and is not rejected under subsections (c) and (e). *See* subsection (f). If the security-interest statement is effective under Section 25, and the security interest has attached under UCC Article 9, the security interest is perfected under Section 26(a). Thus, perfection of the security interest occurs upon receipt the security-interest statement and payment of the fee, even if the security interest is never indicated in the files of the office or on a certificate of title, if there has been attachment under UCC Article 9. A record that is not sufficient under subsection (b) is not received by the office for purposes of this section. The effect of this section is limited to receipt and the effectiveness of the security-interest statement; it does not impose any affirmative duties on the office.

Sections 25 and 26 replace only the Article 9 provisions governing perfection by filing a financing statement, for vehicles subject to this [act]. *See* Section 9-311(a)(2). Article 9 provisions governing the scope of Article 9, choice of law, attachment of the security interest, priority, and enforcement are not affected by this [act]. For example, issues relating to repossession of vehicles and disposition by the secured party are governed by Article 9 and, as applicable, other local law, and are not governed by this [act]. *See* Section 12 of this [act]. However, issues relating to ownership, perfection of the security interest, and other matters governed by this [act] will apply to vehicles subject to this [act]. *See, e.g.*, Sections 12-26.

Section 25(a) references the requirements for authorization of a financing statement under article 9, and Section 26(a) references the Article 9 requirements for attachment. These issues and others within the scope of Article 9 remain applicable and are not displaced by this [act] or other applicable state laws such as retail installment sales acts (RISAs) or the Uniform Consumer Credit Code (U3C). RISAs and the U3C govern some aspects of consumer sales and credit transactions but do not provide for the creation, perfection, or enforcement of security interests or determine ownership of a vehicle; these issues are governed by Article 9 and this [act].

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

number (VIN) or execution of the certificate of title. An error in the VIN also may be harmless under Section 20. Therefore, sufficiency under subsection (b) does not require precision with respect to the debtor's or the secured party's name, or the description of the collateral, in order for receipt of the security-interest statement to occur and the statement to be effective. If the requirements for sufficiency under subsection (b) are met, and the statement is not rejected under subsection (e), the security-interest statement is received under subsection (a), and the effect of any errors will be determined under Section 20. An error in the VIN is grounds for rejection under subsection (c), but does not require rejection, *e.g.*, if the office is able to reconcile the error. Even if the office rejects the security-interest statement due to an erroneous VIN under subsection (c), the security-interest statement may be received and effective under subsection (a) if rejection does not occur under subsection (e). *See also* subsection (f). In that case the security interest may be perfected under Section 26, and the effect of the erroneous VIN will be determined under Section 20. Thus Section 25 determines the receipt effectiveness of a security-interest statement for purposes of perfection under Section 26, while Section 20 determines the effect on reliance parties of any erroneous information in that statement.

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

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

Subsection (e) provides a procedure to require the office to notify a secured party if a security-interest statement is rejected. No time limit for this notice is provided. A procedure to allow confirmation by the office will accommodate the need for secured parties to receive notice of the receipt, while allowing the office sufficient time to process incoming security-interest statements. If notice of rejection is not sent under subsection (e), a security-interest statement sufficient under subsection (b) is received under subsection (a), even though it may not otherwise meet the requirements of this [act] and was not recorded or indexed in the files of the office. In this circumstance, if the other requirements of subsection (a) and Article 9 are met, the security-interest statement will be effective and under Section 26 the security interest will be perfected by the security-interest statement. Of course, if the security-interest statement is significantly defective on its face, *e.g.*, no debtor's name or a completely erroneous description of collateral, it

1 may not be sufficient under subsection (b), or even if sufficient the error may render it seriously
2 misleading under Section 20. *See also* Section 18. Priorities between the secured party and
3 those who may be prejudiced by the failure of the office to file and index the statement, or to
4 indicate it on the certificate of title, are covered by other sections, *e.g.*, Sections 18-20.
5

6 This section applies to any vehicle covered by a certificate of title under this [act]
7 pursuant to Section 4. If there is no certificate of title created by a governmental agency of any
8 state, this [act] and Sections 25-26 may apply pursuant to this State's choice of law rules, *e.g.*, if
9 the vehicle is located in or owned by a resident of this State or is registered with an Indian tribe
10 in this State pursuant to a tribal law that does not meet the requirements for a certificate of title
11 statute under UCC Article 9 Section 9-102(a)(10).
12

13 **SECTION 26. PERFECTION OF SECURITY INTEREST.**

14 (a) Except as otherwise provided in subsections (b), (d), and (e), a security
15 interest in a vehicle may be perfected only by a security-interest statement that is effective under
16 Section 25. The security interest is perfected upon the later to occur of receipt of the security-
17 interest statement under Section 25 or attachment of the security interest under [Uniform
18 Commercial Code Section 9-203].

19 (b) If the office creates a certificate of title naming a lessor, consignor, bailor, or
20 secured party as owner and the interest of the person named as owner is a security interest, the
21 certificate of title serves as a security-interest statement that provides the name of the person as
22 secured party. If the interest of the person named as owner in an application for a certificate of
23 title delivered to the office in accordance with Section 9 is a security interest, the application is a
24 security-interest statement that provides the name of the person as secured party. The naming of
25 the person as owner on the application or certificate of title is not of itself a factor in determining
26 whether the interest is a security interest.

27 (c) If a secured party assigns a perfected security interest in a vehicle, the receipt

1 by the office of a security-interest statement providing the name of the transferee or its
2 representative as secured party is not required in order to continue the perfected status of the
3 security interest against creditors of and transferees from the original debtor. However, a
4 purchaser of a vehicle subject to a security interest that obtains a release from the secured party
5 indicated in the files of the office or on the certificate of title takes free of the security interest
6 and of the rights of a transferee if the transfer is not indicated in the files of the office and on the
7 certificate of title.

8 (d) This section does not apply to a security interest in a vehicle created by a
9 person during any period in which the vehicle is inventory held for sale or lease by the person or
10 is leased by the person as lessor if the person is in the business of selling goods of that kind.

11 (e) A secured party may perfect a security interest by taking possession of a
12 vehicle only pursuant to [Uniform Commercial Code Section 9-313(b) and 9-316(d)].

13 Preliminary Comments

14
15 This section is derived from UCC Article 9 Sections 9-310(a), 9-516(a) and (b), 9-517,
16 and 9-520(a), (b), and (c). One purpose is to establish a system for perfection of security
17 interests by filing a security-interest statement with the office, even if the secured party cannot
18 obtain and submit to the office the certificate of title. So long as this [act] applies to the vehicle,
19 under Section 4 or other choice of law rules, perfection may occur under this section without
20 regard to the certificate of title. *See also* Comment to Section 25. Similarly, perfection does not
21 require indication on a written certificate of title, although that does confer an additional measure
22 of protection. *See* Sections 15-19. Perfection occurs upon receipt of a sufficient security-interest
23 statement and payment of the required fee, making the statement effective under Section 25 and
24 subject to perfection under this section, without any indication on a certificate of title, or even if a
25 certificate of title has not otherwise been created. *See* Sections 4 and 25. Subsection (a) also
26 makes clear that perfection under this section is the exclusive means of perfecting a security
27 interest in vehicle, except as provided in subsections (d) and (e), which follow UCC Article 9
28 Sections 9-311(d) and 9-313(b).

29
30 Thus, this section is subject to qualifications and exceptions elsewhere in this [act] and
31 the UCC, *e.g.*, providing for perfection by filing or possession in limited circumstances (Article 9

1 Sections 9-311(d), 9-313(b)), or requiring attachment as a prerequisite to perfection
2 (Section 26(a), Article 9 Sections 9-203, and 9-308(a)). This [act] is also subject to general rules
3 in the UCC governing assignments and the rights of third parties, *e.g.*, in Article 9 Part 4, and
4 this is recognized in subsection (b).

5
6 Perfection under Sections 25-26, without indication of the security interest on a written
7 certificate of title, would be effective against lien creditors, but not against a competing party
8 who relies on the certificate of title, pursuant to Sections 18-19. For example, certain competing
9 buyers would prevail under Section 18. *See also* the impact of errors and omissions under
10 Section 20.

11
12 Subsection (b) recognizes that a secured party, lessor, or bailor may be listed as owner on
13 the certificate of title. This will be sufficient to perfect the interest of that person, including a
14 security interest. This reflects current law. *See, e.g., In re Charles*, 323 F.3d 841 (10th Cir.
15 2003). The secured party, lessor, or bailor listed as owner may make application for a certificate
16 of title indicating that person as owner, under Section 9.

17
18 If a secured party assigns a perfected security interest in a vehicle, the receipt of a
19 security-interest statement under Section 25 providing the name of the transferee or its
20 representative as secured party is not required to continue the perfected status of the security
21 interest. However, a purchaser of a vehicle subject to a security interest that obtains a release
22 from the secured party indicated in the files of the office or on the certificate of title takes free of
23 the security interest and also takes free of the rights of a transferee if the transfer is not indicated
24 in the files of the office or on the certificate. *See* subsection (c).

25
26 Subsection (c) also makes clear that retitling is not necessary upon assignment of a
27 security interest. This provision is modeled partly on Article 9 Sections 9-310(c) and 9-338 and
28 makes clear that a failure to indicate a transfer of the security interest in the files of the office or
29 on the certificate of title does affect the perfection or enforcement of the security interest in favor
30 of the transferee, except that a purchaser of the vehicle or competing transferee of the security
31 interest is entitled to rely on the certificate of title or files of the office and takes free of an
32 interest not so indicated if the purchaser or competing transferee gives value in reliance on the
33 certificate of title or the files of the office. *See also* Sections 18 and 20. For example, if a
34 purchaser of the vehicle makes payment in full of the secured debt to the secured party indicated
35 on the certificate of title, that debt would be discharged even if the debt and security interest had
36 been assigned to another creditor.

37
38 As noted above, subsections (d) and (e) follow UCC Article 9 Sections 9-311(d), 9-
39 313(b), and 9-316(d), to provide consistency with the UCC.

40 **SECTION 27. TERMINATION STATEMENT.**

41 (a) A secured party indicated in the files of the office as having a security interest

1 in a vehicle shall deliver to the office and, upon the debtor's request, to the debtor, a signed
2 termination statement if:

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

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

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

10 (1) [30] days after there is no obligation secured by the vehicle subject to
11 the security-interest statement and no commitment to make an advance, incur an obligation, or
12 otherwise give value secured by the vehicle; or

13 (2) [14] days after the secured party receives a signed demand from an
14 owner and there is no obligation secured by the vehicle subject to the security interest and no
15 commitment to make an advance, incur an obligation, or otherwise give value secured by the
16 vehicle.

17 (c) If a written certificate of title has been created and delivered to a secured party
18 and a termination statement is required under subsection (a), the secured party, within the time
19 provided in subsection (b), shall deliver the written certificate of title to the debtor or the office
20 with the termination statement. If the written certificate is lost, stolen, mutilated, or destroyed or
21 is otherwise unavailable or illegible, the secured party shall deliver with the termination
22 statement, within the time provided in subsection (b), an application for a replacement certificate

1 of title meeting the requirements of Section 24.

2 (d) Upon the delivery of a termination statement to the office pursuant to this
3 section, the security-interest statement and any indication of the security interest on the certificate
4 of title to which the termination statement relates ceases to be effective. The files of the office
5 shall indicate the date [and time] of delivery of the termination statement to the office.

6 (e) A secured party is liable for damages in the amount of any loss caused by its
7 failure to comply with this section and for the reasonable cost of an application for a certificate of
8 title under Section 9 or 24.

9 **Preliminary Comments**

10 “Termination statement” is defined at Section 3(a)(30). Upon termination of the
11 effectiveness of a security-interest statement under this section, the office shall indicate in its
12 files the termination of the security-interest statement, and that any subsequent secured party
13 indicated in the files of the office is the secured party of record. *See also* Section 9 (application
14 for a certificate of title that includes a direction to terminate a security-interest statement must
15 include a termination statement); Section 23 (termination without termination statement).
16

17 **SECTION 28. DUTIES AND OPERATION OF FILING OFFICE.**

18 (a) The files of the office shall indicate the information provided in security-
19 interest statements and termination statements received by the office under Section 25 or 27 for
20 at least [10] years after termination of the security-interest statement under Section 27. The
21 information must be accessible by the vehicle identification number for the vehicle and any other
22 indexing methods provided by the office.

23 (b) The office shall send to a person that submits a record to the office, or submits
24 information that is accepted by the office, and requests an acknowledgment of the filing or
25 submission, an acknowledgment showing the vehicle identification number of the vehicle to

1 which the record or submission relates, the information in the filed record or submission, and the
2 date [and time] the record was received or the submission accepted. A request under this section
3 must contain the vehicle identification number and be delivered by means authorized by the
4 office.

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

7 (1) whether the files of the office indicate, as of a date [and time]
8 specified by the office, but not a date earlier than [three] business days before the office received
9 the request, any certificate of title, security-interest statement, or termination statement that
10 relates to a vehicle identified by a vehicle identification number designated in the request; and

11 (2) the name of the owner of record and the effective date of all security-
12 interest statements and termination statements indicated in the files of the office.

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 self-authenticating under [cite applicable rule of evidence].

16 (e) The office shall comply with this section at the time and in the manner
17 prescribed by the rules of the office but shall respond to requests under this section not later than
18 [two] business days after the office receives the request.

19 Preliminary Comments

20 Section 28 is derived from UCC Article 9 Sections 9-522-523.
21
22
23

1 **SECTION 29. RELATION TO UNIFORMITY OF APPLICATION AND**

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

5 **SECTION 30. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL**

6 **COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal Electronic
7 Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not
8 modify, limit, or supersede Section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic
9 delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

10 **SECTION 31. SAVINGS CLAUSE.**

11 (a) Except as otherwise provided in this section, this [act] applies to any
12 transaction, certificate of title, record, or information involving a vehicle, even if the transaction,
13 certificate of title, record, or information was entered into or created before the effective date of
14 this [act].

15 (b) Transactions, certificates of title, records, and information that were validly
16 entered into or created before the effective date of this [act], and would be subject to this [act] if
17 they had been entered into or created on or after the effective date of this [act], and the rights,
18 duties, and interests flowing from these transactions, certificates of title, records, and
19 information, remain valid after the effective date of this [act].

20 (c) This [act] does not affect an action or proceeding commenced before the
21 effective date of this [act].

22 [(d) A security interest that is enforceable immediately before the effective date

1 of this [act] and would have priority over the rights of a person that becomes a lien creditor at
2 that time is a perfected security interest under this [act].]

3 [(d) This [act] does not affect the priority of a security interest in a vehicle if
4 immediately before the effective date of this [act] the security interest is enforceable and
5 perfected, and that priority is established.]

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

7 [add legislative note]

8 **SECTION 33. EFFECTIVE DATE.** This [act] takes effect