

## **Prefatory Note**

This Act is intended to respond to four principal, but by no means the only, factors affecting the transfers of interests in motor vehicles: Diversity of state treatment; the use of electronic records and contracting, evolving commercial practices, and Article 9 of the Uniform Commercial Code.

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 VIN usage, these vehicles are titled by the states under not less than 16 separate schemes, virtually none of which is practically compatible with others for purposes of information exchange and interchange; indeed, the states vary in designation of the officials who title and transfer and who collect state taxes. There is some variation in the definitional scope of titling. Not unlike other states' records, the move from paper to electronic state records is not uniform either, within or among the states.

The explosion in the uses of electronic records and contracting practices by public officials, industries, and consumers, diverse or not, has in many transactions rendered the paper certificate of title an anachronism. While some transactions, for example, casual sales between individuals, continue to validate paper titles, in the vast majority of transactions involving vehicles from manufacture through salvage, none of the governments, manufacturers, financiers, owners/lessees, or others need be denied the convenience or economies of electronics.

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 statutes and regulations, for example, the collection of sales and use taxes, the requirements of safety inspections, and the disclosure of odometer information, which piggyback on the title transfer process.

Recent revision and universal enactment of revised Uniform Commercial Code Article 9 has created inconsistencies with existing laws and regulations, principally in the areas of perfection and priority of security interests. While revised Article 9 resolves many of these issues as they relate to security interests, related certificate of title issues remain unresolved.

Response to these conditions is the overriding purpose of this Act.

However, because of state funding and a variety of other factors it would be unrealistic to expect (in the manner of the latest Article 9 revisions) simultaneous multi-state effectiveness of a statutory revision. For this reason, and because some uses for paper titles remain, the Act provides for both electronic titles and paper titles; like revised Article 9, it is medium neutral. To this extent, the Act is intended to permit an enacting state the flexibility to adopt electronic titling in its time and with its available funds, while also providing a continuing role for paper titles. At the same time, enactment will facilitate both consistency with Article 9, interstate exchange of information, and greater consistency of titling laws with commercial practice, to the benefit of all parties to transfers of interests in motor vehicles.

In this initial draft, questions and issues are raised through-out in the Reporter's Notes. Some of more general application include:

More definitions will be needed, but it will be helpful to first resolve some basic points relating to the current draft.

An earlier version of this draft used the word "goods" instead of "vehicle," on the theory that the basic rules might some day extend to boats and manufactured housing. This draft has been revised to limit its scope to vehicles. However, consideration is appropriate as to the effect of this in states that also cover manufactured homes under their basic certificate of title (CT) law.

Another question is: what vehicles are covered? Answer: Vehicles covered by a CT, subject to the usual exceptions. *See* Certificate of Title Act (COTA) §§ 1-102 and 1-201. Thus the scope issue is governed by: the definition of "vehicle" at § 1-102(a)(4); the scope provision at § 1-201 (drawn from UCC § 9-303); and the exclusions at § 1-202.

A basic definitional issue is whether a CT should mean a "written" CT. This has consequences through-out the draft. This draft is consistent with common usage in treating a CT as a writing, with electronic CTs treated separately. Alternatively, a "certificate of title" could be defined as a "record," *i.e.*, either written or electronic. Two problems would arise from the latter approach: (1) The common usage of "certificate" conotes a piece of paper, and readers could be confused if this is overturned in the definitions; (2) every time the draft distinguishes between electronic and paper CTs it would be necessary to specify that or when a piece of paper is required.

Therefore, in this draft: CT means a written CT; electronic CT is a separate designation that means what it says; and "record" (as in the UETA) can encompass both. The draft also uses a new definition ("record certificate") as an umbrella term that encompasses both paper and electronic CTs. Note that the UETA does not resolve this because it does not require state agencies to recognize electronic records. This basic issue needs to be addressed before the Drafting Committee goes any farther in drafting substantive rules, because it will determine the basic terminology and approach to be used.

This draft reconciles the Article 9 definition of CT (incorporated in COTA § 1-102(a)(1)) with the need to allow lien entry perfection by filing (COTA § 3-101). The Article 9 (§ 9-102(a)(10)) phrase "as a condition *or result* . . .," in conjunction with this draft, allows a lien entry filing to constitute CT lien entry perfection as against some parties (*e.g.*, lien creditors), even if no paper CT is issued (an electronic CT) *or* there is an outstanding CT that does not indicate the lien.

Thus the proposed, traditional definition of CT is reconciled with proposed innovations such as electronic CTs and perfection by lien entry filing.

Note also COTA § 2-203: Consumer buyers are protected from common adverse CT claims by COTA § 2-203(b). But other purchasers who do not take the CT are subordinate to CT interests, under COTA § 2-203(a). Section 2-206 provides for title holding by the secured party, but this does not diminish the protection of § 2-203(b) for the buyer.