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Dear Mr. Harrell,

These comments are being sent to you in advance of the October 29 through October 31 meetings to be held in Waltham, Massachusetts. Whether or not NCLC attends portions of those meetings,[1] we would appreciate your distributing this letter to the Committee *in advance* of the meeting.

General
These comments amplify and supplement those made by our letters of March 31, 2003, May 7, 2003, and January 14, 2004. The draft COTA is seriously flawed, lacking many of the provisions required for any uniform law in this area. Missing from the draft are provisions detailing how titles are to be transferred from one party to another, dealing with the integrity of electronic titles, or responding to law enforcement needs.

Instead, the draft appears written for and largely by secured creditors, instead of the actual owners of vehicles, their transferees, or law enforcement. The fact that automobile lenders predominate in the audience at COTA meetings is no reason for NCCUSL to enact a model that ignores many of the fundamental goals of a certificate of title act. For further discussion of these general comments, we refer you to our letters of March 31, 2003, May 7, 2003, and January 14, 2004. In these comments, we will address specific recommendations to change the existing draft:

The Act's Title
Calling the draft COTA a "Uniform Certificate of Title Act" is seriously misleading to state legislators and the public. Even the drafting comments admit that many certficate of title provisions are not covered and must be left to existing state law. Nowhere does the draft indicate which provisions a state should keep and which provisions the COTA replaces.

Here is one example of a glaring omission from the draft COTA: the draft does not require purchasers at retail to obtain a new title.

[1] We want to reiterate, for the record, the substance of our January, 2004 letter to William Henning, to explain the limited nature of any NCLC participation in the Waltham meetings. NCLC never requested a Boston COTA meeting, we can devote extremely limited resources to COTA, and NCCUSL has clearly indicated to us that COTA will not address issues of most concern to us. Our January letter urged COTA meetings be held in locations convenient to law enforcement, and we urged that credit counseling drafting sessions be held in Boston, because we have extensive information to provide to that drafting committee.

Another example: the draft essentially ignores transfer of titles, even though transfer of ownership and the rights of a new owner are established by assignment of the existing title, not by the application or issuance of a new title. Many used vehicles purchased for re-sale are never accompanied by a new certificate. Because the key event is the assignment of the existing title, every state has detailed procedures to accomplish this transfer. We search in vain for such procedures in the present draft. Section 16(a) only indicates that the seller "shall execute the certificate to the buyer."

Recommendation # 1. Change the name of the Act, to "The Rights of Secured Creditors Regarding Motor Vehicle Titles,"or "Selected Provisions Relating to Motor Vehicle Titles."

Recommendation # 2. Specify precisely which missing provisions were intentionally deleted, and which missing provisions legislatures should retain as specified in existing law.

Section 11. **Contents of Certificate of Title.** In every state, a certificate of title (and any other document used to transfer title, such as a reassignment form) is created using a secure printing process, meaning a process that deters and detects counterfeiting and unauthorized reproduction and allows alterations to be visible to the naked eye. Obviously, electronic titles present special opportunities for forgery and alteration. The COTA draft makes no mention of electronic titles being produced using a secure process or meeting any other standard of document integrity.

Drafting comments to Section 9 obfuscate this failing. [As an aside, the comments incorrectly state that the odometer disclosure in the *application* for a new title is in recognition of federal law. Federal law requires disclosure on the reassignment block of the *existing title*, not on the title application. The application is never signed by the transferor responsible for the disclosure and many transfers do not even involve a subsequent application for a new title. Nor is disclosure on the application sufficient to satisfy federal law. State personnel, in issuing a new title, should review the disclosure on the old title, and not rely on the buyer's statement on the application for a new title.]

What is of concern about the Section 9 drafting comments is their characterization of NHTSA's letter to Huddleson. The drafting comments imply that the letter implies that a simple electronic disclosure may be sufficient to meet federal law's stringent integrity standards for a certificate of title. This cannot be further from the truth. The Huddleson letter's implication is the exact opposite.

Under federal law, the lessee to lessor disclosure need only be *written*, while any certificate of title or other transfer document must be set forth "by means of a secure printing process or other secure process." 49 C.F.R. 580.4. The Huddleson letter states that use of a "secure password and user identification number for each lessee" meets the *writing* requirement, indicating that the writing requirement is needed to identify the person making the disclosure, and the use of a secure password and identification number meets this need.

A certificate of title must not only be written, but printed using a secure process, because the concern is not just who is assigning the title, but whether title information is altered or forged, and whether the title is counterfeit. (Ask anyone in law enforcement about widespread title counterfeiting, altering, and forging.) The draft COTA provides no standards for the integrity of either paper or electronic titles. In fact, the draft does not even meet the Huddleson letter's standard for a *written* document, never mind standards for a document created with a secure process.

In addition, missing from the section's laundry list of items making up the contents of the certificate of title are any mention of reassignment blocks on a paper title or similar spaces on the electronic title. Without this mention, the draft provides no mechanism to transfer title.

Recommendation # 3. The draft should delineate those aspects of the content of both electronic and paper titles necessary for the proper assignment of title. Despite repeated requests of this committee for an explanation as to how an electronic title will be transferred, we are still in the dark, so cannot make a specific recommendation here, other than to state that each transfer must be securely recorded on the existing electronic title.

Recommendation # 4. The draft must contain standards as to the integrity and security of electronic titles, at least as strong as those that apply presently to paper titles.

Section 16. Transfer. As described earlier, perhaps no titling issue is more important to used vehicle purchasers and to law enforcement than how an existing title is transferred. But the only draft COTA provision dealing with this simply states that the transferor executes the certificate to the buyer. This is clearly inadequate. In every state, each transfer must be accompanied by the signature and printed name of the individual executing the transfer, the date of the transfer, the transferor's full name and address, the transferees name and address, and the signature of the transferee. Why bother including brands on the title if there is no requirement that the transferee even acknowledge seeing the title?

Section 16 does not even say that the execution shall be "on" the actual certificate, appearing to allow execution on a separate document. In every state, the transfer must be executed "on" the certificate, and delineated exceptions are made where the certificate is lost, in the possession of the creditor, or where all the reassignment blocks are already completed. Of course, such exceptions will never be necessary with an electronic title, because the electronic title is never lost or physically absent, and the reassignment blocks on an electronic title are never filled up.

The draft quotes extensively concerning the NMVTIS. Nothing is more critical to the successful operation of NMVTIS than the assurance that every transfer be indicated in a secure means on the electronic title, with information identifying the transferor and transferee. Many in law enforcement are excited about electronic titling for one fundamental reason: it will mean that every reassignment of title, with the information that must be disclosed on that reassignment, can be reported immediately to the DMV, and easily captured on an electronic database. The major flaw of any motor vehicle database in use today is that it relies on initial information found on new title documents and not that found on subsequent reassignments of that title. Consequently, electronic titling has both increased potential for fraud (because of the ease of manipulation of electronic information) and for stopping fraud. The draft COTA does not deal adequately with either potential.

Section 16 also uses the phrase "as promptly as practicable." This is an overly permissive standard, allowing transfer of the title any time a party wishes, as long as it can make a colorable argument that it would be impractical to do so earlier. The language makes prompt transfer of title optional.

Recommendation # 5. Specify that the execution for both paper and electronic titles must be on the certificate itself, with clearly delineated *secure* alternatives for any narrow exceptions for paper titles.

*Recommendation # 6. A*ny transfer of title must be accompanied by specified information, including the identity, addresses, and execution of both parties.

Recommendation # 7. Replace "as promptly as practical" with "promptly."

Section 17. Notice of Transfer Without Application. This section is confusing. Every transfer must be indicated on the existing certificate of title. There can also be standards as to when such a transfer must also result in a new application for a title. For example, in every state today, a transfer for retail use requires application of a new title, although this provision is noticeably absent from the draft COTA.

For electronic titles, there is no "may" involved. The transfer must result in an execution on the electronic title, and that change to the electronic title must be a matter of public record. There is no such thing under federal law as a transfer of title that does not involve an assignment of the actual title. This optional reporting of a transfer in law confuses too many concepts.

Recommendation # 8. Delete this provision or rewrite it to require application for a new title after each sale to a buyer for use, and to require that every transfer be indicated on the certificate of title. Since one would assume that the DMV and NMTVIS will have access to the electronic title, this means that any transfer of an electronic title must promptly be provided to the state.

Conclusion

These recommendations do not exhaust our concerns with the draft COTA or with the process by which it has been achieved. Instead, we urge the committee to contact those in law enforcement and other interested parties to develop a more balanced and comprehensive certificate of title act. At a minimum, any end product should not be held out as a "Uniform Certificate of Title Act," but only should be represented as containing selected provisions relating to motor vehicle titles. To do otherwise would seriously mislead state legislatures and the public.

Thank you for the opportunity to present these views.

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