

FOR DISCUSSION ONLY

CERTIFICATE OF TITLE ACT

FOR DISCUSSION PURPOSES ONLY

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

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With Reporter's Notes

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ON UNIFORM LAWS

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CERTIFICATE OF TITLE ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE	2
SECTION 2. DEFINITIONS	2
SECTION 3. LAW GOVERNING VEHICLES COVERED BY CERTIFICATE OF TITLE OR CERTIFICATE OF ORIGIN	7
SECTION 4. EXCLUSIONS.	8
SECTION 5. VEHICLE IDENTIFICATION NUMBER	9
SECTION 6. CERTIFICATE OF ORIGIN	9
SECTION 7. INCOMPLETE VEHICLES	10
SECTION 8. APPLICATION FOR A CERTIFICATE OF TITLE	11
SECTION 9. CREATION OF OR REFUSAL TO CREATE CERTIFICATE OF TITLE	12
SECTION 10. CONTENTS OF CERTIFICATE OF TITLE	13
SECTION 11. REGISTRATION	15
SECTION 12. TRANSFER OF TITLE	16
SECTION 13. NOTICE TO [OFFICE]	16
SECTION 14. ADVERSE CLAIMS	17
SECTION 15. TRANSFEREE OF VEHICLE COVERED BY CERTIFICATE OF TITLE ...	19
SECTION 16. EFFECT OF ERRORS OR OMISSIONS ON CERTIFICATE OF TITLE	20
SECTION 17. DELIVERY OF CERTIFICATE OF TITLE	21
SECTION 18. SECURED PARTY TRANSFER OF TITLE	23
SECTION 19. OTHER TRANSFER OF TITLE BY OPERATION OF LAW.	25
SECTION 20. EXAMINATION OF FILES	26
SECTION 21. MAINTENANCE OF FILES.	27
SECTION 22. APPLICATION FOR TRANSFER WITHOUT CERTIFICATE OF TITLE ...	28
SECTION 23. LOST, STOLEN, OR DESTROYED CERTIFICATES OF TITLE; REPLACEMENT TITLES	29
SECTION 24. ODOMETER DISCLOSURE	30
SECTION 25. RECEIPT OF LIEN ENTRY FORM	30
SECTION 26. PERFECTION OF SECURITY INTERESTS	32
SECTION 27. EFFECTIVE DATE OF LIEN ENTRY	35
SECTION 28. UNIFORM FORM OF LIEN ENTRY	35
SECTION 29. DUTIES AND OPERATION OF FILING OFFICE	35
SECTION 30. TITLE BRAND	35

1 **CERTIFICATE OF TITLE ACT**

2

3 **SECTION 1. SHORT TITLE.**

4 This [Act] may be cited as the Certificate of Title Act.

5

6 **SECTION 2. DEFINITIONS.**

7 (a) In this [Act]:

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

10 **Reporter’s Note**

11 The UCC citation in Section 2(a)(1) references revised Uniform Commercial Code (UCC)
12 Article 1 (2002 uniform text). If a state has not enacted revised Article 1, the citation should be
13 to Section 1-201(9) of old Article 1 (as enacted in that state).

14

15

16 (2) “Certificate of origin” means a record created or authorized by the manufacturer
17 or importer of a vehicle as a certificate of origin covering that vehicle, that includes a description
18 of the vehicle, any vehicle identification number, and the names of the manufacturer, seller, and
19 purchaser.

20 **Reporter’s Note**

21 The certificate of origin is a temporary record that describes the vehicle, its manufacturer, and
22 each seller and purchaser during the period between manufacture of the vehicle and creation of
23 the first certificate of title. It may be created or authorized by the manufacturer or, in the case of a
24 vehicle manufactured outside the United States, by the importer of the vehicle. The certificate of
25 origin is submitted to the office that creates the first certificate of title and is to be cancelled at
26 that time. *See also* Sections 6, 7, 8, 11-13, and 21.

27

1 (3) “Certificate of title” means a record created or authorized by the [office] that is
2 evidence of ownership of the vehicle or perfection of a security interest in the vehicle covered by
3 the record and with respect to which this [Act] and [Uniform Commercial Code Article 9]
4 provide that a perfected security interest has priority over the rights of a lien creditor with respect
5 to the vehicle.

6 **Reporter’s Note**

7 The definition of “Certificate of title” is similar to those in many state certificate of title laws.
8 It recognizes the certificate of title as evidence of ownership. Portions of the definition are also
9 derived from UCC Article 9 Section 9-102(a)(10). One change is to define certificate of title as a
10 “record,” meaning it can be in either paper or electronic form. The definition of “certificate of
11 origin” is similar in this regard.

12 This definition requires a certificate of title to have four basic elements: (1) a record; (2)
13 created or authorized by the appropriate office pursuant to a statute; (3) evidencing title to a
14 vehicle; and (4) created pursuant to a law providing for perfection of security interests. *See also*
15 the specific requirements for a certificate of title issued pursuant to this [Act], at Section 10.

16 The definition of “certificate of title” is different from UCC Article 9 Section 9-102(a)(10) in
17 some important ways. The Article 9 definition incorporates by reference the standards of the
18 applicable certificate of title law. COTA is that law, and therefore cannot directly use the Article
19 9 incorporation-by-reference approach. Moreover, COTA provides for perfection of a security
20 interest upon receipt by the [office] of a lien entry form, even if the security interest is not
21 indicated on the certificate of title or in the [office] files, or the [office] never receives an
22 application for a certificate of title. *See* COTA Sections 3(b), 25, and 26. While this is
23 consistent with Article 9 Section 9-102(a)(10), COTA requires a definition that directly
24 encompasses these functions, while Article 9 can simply tie into COTA by reference.

25 Pursuant to Section 10(c), the certificate of title must provide for reassignment of title by
26 execution of the certificate of title, or a related form, including dealer reassignments and secured
27 powers of attorney, *e.g.*, by execution of a form that is part of or related to the certificate of title.
28 *See* the definition of “execute.”

29
30 (4) “Create” means to establish [bring into being] a certificate of title or certificate of
31 origin pursuant to this [Act].

1 **Reporter’s Note**

2 This section defines what it means to “create” a certificate of title. This definition relates to
3 other definitions and provisions of this [Act]. See, e.g., the definitions of “Electronic certificate
4 of title” and “written certificate of title,” *infra* Section (2)(a)(4) and (16); *infra* Section 9
5 (obligation of the [office] to create a certificate of title).
6

7
8 (5) “Electronic certificate of title” means a certificate of title created as a record or
9 records consisting of information maintained only in an electronic medium.

10 **Reporter’s Note**

11 “Electronic certificate of title” designates a certificate of title that meets all requirements in
12 the definition of a certificate of title and is only in electronic form. See also Section 10 and
13 Section 23. This definition is modeled on the UCC Article 9 definition of “Electronic chattel
14 paper” at Section 9-102(a)(31). The general purpose is to create a parallel system for electronic
15 certificates of title, somewhat like that for electronic chattel paper in Article 9, while continuing
16 to recognize the traditional primacy of a paper certificate of title if one exists. See Sections 12,
17 15, 17, 23, and 26; and the definition at Section 2(a)(18),
18

19
20 (6) “Execute” or “execution” means to sign and transfer a form on or attached to or
21 accompanying a certificate of title or certificate of origin for the purpose of transferring title to
22 the vehicle covered by the certificate of title or certificate of origin.

23 (7) “Lien creditor” means:

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

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

27 (C) a trustee in bankruptcy from the date of the filing of the petition; and

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

29 (8) “Person” means an individual, corporation, business trust, estate, trust, partnership,

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

3 (9) “Purchase” means to take by sale, discount, negotiation, mortgage, pledge, lien,
4 security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in
5 property.

6 **Reporter’s Note**

7 This definition is identical to UCC Section 1-201(b)(29) (2002 uniform text); *see also*
8 Section 1-201(32) of old Article 1.
9

10
11 (10) “Record” means information that is inscribed on a tangible medium or that is
12 stored in an electronic or other medium and is retrievable in perceivable form.

13 (11) “Security interest” means an interest in personal property which secures payment
14 or performance of an obligation, as provided in [Uniform Commercial Code Section 1-203].

15 **Reporter’s Note**

16 Section 2(a)(10) references and incorporates revised UCC Section 1-203 (2002 uniform text).
17 If a state has not enacted revised Article 1, the citation should be Section 1-201(37) of old Article
18 1 (as enacted in that state).
19

20
21 (12) “Secured party” means:

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

24 (B) a person that holds an agricultural lien;

25 (C) a consignor;

26 (D) a person to which accounts, chattel paper, payment intangibles, or
27 promissory notes have been sold;

1 (E) a trustee, indenture trustee, agent, collateral agent, or other representative
2 in whose favor a security interest or agricultural lien is created or provided for; or

3 (F) a person that holds a security interest arising under [Uniform Commercial
4 Code Section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118].

5 (13) “Sign” means with present intent to authenticate or adopt a record,
6 (1) to execute or adopt a tangible symbol; or
7 (2) to attach to or logically associate with the record an electronic sound, symbol,
8 or process.

9 (14) “State” means a state of the United States, the District of Columbia, Puerto Rico,
10 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
11 of the United States.

12 (15) “Title brand” means any designation of prior damage, use, or condition of a
13 vehicle that [this [Act] or] law other than this [Act] requires to be indicated on a certificate of
14 title.

15 (16) “Transfer” means a conveyance of an interest in personal property.

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

19 (A) a manufactured home;

20 (B) manufactured housing;

21 (C) an implement of husbandry;

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

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

5 (18) “Written certificate of title” means a certificate of title created and maintained in
6 paper form.

7 (b) The following definition in other laws apply to this [Act]:

8 **Reporter’s Note**

9 Two fundamental purposes are evident in these definitions: (1) Allowing purely electronic
10 certificates of title and related documentation (with a tiered option provided at Sections 9 and 17
11 to allow the owner or secured party to request a paper certificate of title); and (2) an allowing
12 some transactions relating to paper certificates of title to be conducted electronically (*e.g.*,
13 assigning certificates of origin, and perfection of security interests under Sections 25 and 26).
14 Thus electronic records may be used to effectuate transactions that involve paper certificates of
15 title.

16 This draft contemplates the filing of paper and electronic lien entry forms to perfect security
17 interests (Sections 25 and 26), and the conduct of security interest and title searches, without any
18 certificate of title, based on the files of the state certificate of title agency (designated herein the
19 [office]). *See* Section 25. The official records of the [office] are designated “files,” to avoid
20 confusion with the defined term “record.”

21 Thus “certificate of title” means any form of “record” meeting the requirements for a
22 certificate of title but not necessarily either a paper or electronic certificate of title. An electronic
23 certificate of title, in contrast, indicates a certificate of title being maintained solely in electronic
24 form; a written certificate of title is one that exists in paper form.
25
26

27 **SECTION 3. LAW GOVERNING VEHICLES COVERED BY CERTIFICATE OF**
28 **TITLE OR CERTIFICATE OF ORIGIN.**

29 (a) The local law of the jurisdiction under whose certificate of title a vehicle is covered
30 governs all issues relating to or derived from the certificate of title and all issues governed by this
31 [Act], even if there is no other relationship between the jurisdiction and the vehicle or the owner.

1 (b) A vehicle is covered by a certificate of title when an application for a certificate of
2 title or a lien entry form and the applicable fee are received by the [office] in accordance with
3 this [Act]. A vehicle ceases to be covered by a certificate of title at the earlier of the time the
4 certificate of title ceases to be effective under this [Act] or the time the vehicle subsequently
5 becomes covered by a certificate of title created by another jurisdiction.

6 (c) When a certificate of origin bears a reasonable relation to this state and also to another
7 state or nation the parties may agree that the law either of this state or of such other state or
8 nation shall govern their rights and duties with respect to the certificate of origin. Failing such
9 agreement this [Act] applies to certificates of origin bearing an appropriate relation to this state.

10 **Reporter’s Note**

11 This section is derived from UCC Section 9-303. One purpose of this [Act] is to conform to
12 and avoid conflicts with the UCC, including Article 9.

13 The language of Section 9-303 has been revised in Section 3 of this [Act] to limit the
14 application of COTA to “vehicles” (as defined in Section 2) rather than applying to “goods” as in
15 Article 9 Section 9-303. This reflects the limitation of COTA to vehicles. *See* Sections 2(a)(2),
16 2(a)(3), 2(a)(17).

17 As a result of the definitions at Section 2, and the scope and choice of law provisions at
18 Section 3, this [Act] would apply only to a “vehicle” that is “covered” by a “certificate of title”
19 created or to be created in this state.

20 A vehicle becomes covered by a certificate of title when an application or a lien entry form
21 and any required fees are delivered to the [office] in accordance with the requirements of this
22 [Act]. *See* Sections 8, 9. At that time this [Act] would apply to all issues relating to the
23 certificate of title or otherwise governed by this [Act]. *See* Sections 25, 26, and 27 regarding the
24 effect of a lien entry form. Section 3 provides a choice of law to establish the applicability of
25 Sections 25, 26, and 27.

26 Subsection (c) is derived from old UCC Article 1 Section 1-105(1).

27 **Definitional Cross Reference:**

28 “Certificate of title.” Section 2(a)(3).

29 “Receipt of lien entry form.” Section 25.

30 **SECTION 4. EXCLUSIONS.**

1 This [Act] does not apply to:

2 (1) a vehicle owned by the United States unless it is covered by a certificate of title;

3 or

4 (2) a vehicle owned by this state or a [local government] in this state unless it is
5 covered by a certificate of title.

6 **Reporter’s Note**

7 This section is derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft
8 Act of 1955 (UMVCT) Section 2. UMVCT Section 2 additionally provides specific exclusions
9 for construction equipment, farm equipment, golf carts, boat trailers, and the like. These have
10 been removed from Section 4, as redundant in view of the definition of “vehicle” at
11 Section 2(a)(17).

12
13
14 **SECTION 5. VEHICLE IDENTIFICATION NUMBER.**

15 A vehicle identification number assigned to a vehicle by or pursuant to authority from any
16 manufacturer or importer of that vehicle under the law of any state must be recognized and
17 recorded as the vehicle identification number by the [office].

18 **Reporter’s Note**

19
20 The standards governing vehicle identification numbers, as reflected on certificates of origin
21 and certificates of title, are derived from industry and title administrator practices. Departure
22 from these practices could be a basis for objection by a purchaser or the [office] under law other
23 than this [Act]. *See, e.g.*, revised Article 1 Section 1-303 (2002 uniform text) (old Article 1
24 Section 1-205). A purpose of this [Act] is to provide legal principles consistent with these
25 practices.

26
27
28 **SECTION 6. CERTIFICATE OF ORIGIN.**

29 (a) If a certificate of origin is created, or required to be created under law other than this
30 [Act], the manufacturer or importer of a vehicle that creates or authorizes the creation of a
31 certificate of origin for the vehicle shall execute the certificate of origin to the transferee or the

1 [office]. When the vehicle is transferred each succeeding transferor shall execute to the next
2 purchaser or the [office] all effective certificates of origin covering the vehicle.

3 (b) A purchaser may require that a certificate of origin be created in writing and signed. If
4 a written certificate of origin is created, any existing electronic certificate of origin covering the
5 same vehicle is replaced by the written certificate of origin and is no longer a certificate of origin.

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

9 (d) This section does not repeal law other than this [Act] requiring licensing for parties to
10 transactions covered by this section.

11 **Reporter's Note**

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

15 Subsection (d) emphasizes that COTA does not repeal dealer or other licensing requirements.
16 *See* Section 3(c) for the choice of law rule that determines whether this [Act] applies to a
17 certificate of origin.

18 **Definitional Cross Reference:**

19 "Execute." Section 2(a)(5).

20 "Purchase." Section 2(a)(8).

21 "Transfer." Section 2(a)(16).

1 (3) the transferor's name, physical address, and, if different, an address for receiving
2 written communications, and may also include an e-mail address;

3 (4) the date of transfer;

4 (5) any known security interest in the vehicle; and

5 (6) any known title brand.

6 (b) Except as provided in Section 18, 19, 22, or 23, the application must be accompanied
7 by any known existing certificate of title or certificate of origin, or other known existing record
8 of the vehicle's certificate of title or certificate of origin, executed to the purchaser or other
9 transferee by the transferor as indicated in the files of the [office] or a person authorized by the
10 transferor.

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

12 (d) [AAMVA photo copy procedure.]

13 **Reporter's Note**

14 The applicant's name may be determined in accordance with UCC Article 9 Section 9-503.
15 Once the vehicle is covered by a certificate of title however, the effect of errors or omissions is
16 governed by Section 16 of this [Act].

17 This section provides the basic requirements for an application for a certificate of title. It is
18 supplemented by Sections 18, 19, 22, and 23, which provide separate requirements for certain
19 specified circumstances, *e.g.*, an application under Section 23 for a replacement certificate of title
20 when the previous certificate of title has been lost, stolen, or destroyed.

21 The [office] may request additional information not specified in this section, such as the sales
22 price, for taxation or other purposes, but the accuracy or lack of this additional information does
23 not affect the validity of the application for a certificate of title. *See also* Section 9.
24

1 **SECTION 9. CREATION OF OR REFUSAL TO CREATE CERTIFICATE OF**
2 **TITLE.**

3 (a) Upon submission of an application of Section 8 or, as applicable, Section 16, Section
4 18, Section 19, Section 22, or Section 23, and payment of all applicable fees and taxes by a
5 method or medium of communication and payment authorized by the [office], unless [there is
6 credible evidence submitted to the [office] that] the application is fraudulent or would facilitate a
7 fraudulent or illegal act or otherwise fails to comply with law other than this [Act], the [office]
8 shall create a certificate of title. The certificate of title must show the purchaser or other
9 transferee as owner of the vehicle and the existence of any outstanding security interests
10 perfected under Section 26.

11 (b) A certificate of title is created when the record of the certificate of title is [made part
12 of the [office] files].

13 (c) A certificate of title may be created in paper or electronic form, to the extent the
14 [office] authorizes and creates electronic certificates of title, [at the option of the secured party,
15 or, if no security interest is indicated in the files of the [office],] at the option of the purchaser or
16 other transferee.

17 (d) If a vehicle for which an application is made for a certificate of title is subject to a
18 security interest indicated in the files of the [office], the [office] shall send or otherwise deliver
19 any written certificate of title or provide notification of an electronic certificate of title to the first
20 secured party indicated in the files of the [office]. If there is no security interest indicated in the
21 files of the [office], the office shall send or otherwise deliver any written certificate of title or

1 provide notification of an electronic certificate of title to the owner as indicated in the files of the
2 [office].

3 (e) The [office] may revoke or refuse to create a certificate of title only for a failure of the
4 application to meet the requirements of this [Act], and only upon [30] days' prior notice served
5 [in person or by regular mail or e-mail, delivered] [as in a civil action] to the applicant and to all
6 secured parties indicated in the files of the [office].

7 **Reporter's Note**

8 *See also* the standards for delivery of a certificate of title at Section 17. The determination of
9 the first secured party as indicated in the files of the office is an administrative matter for
10 purposes of this section, and is not determinative of priority issues for purposes of UCC
11 Article 9.

12 This section requires the [office] to create a certificate of title pursuant this Act, upon
13 submission of an application meeting the requirements of Section 8, 18, 19, 22, or 23. Other
14 COTA provisions, for example Section 14 (Adverse Claims) and Section 15 (Transferee of
15 Vehicle Covered by Certificate of Title) provide substantive rules to govern the resolution of
16 competing claims, *e.g.*, in contract disputes, but are not intended to be addressed or resolved by
17 the [office] in the application process.

18 19 20 **SECTION 10. CONTENTS OF CERTIFICATE OF TITLE.**

21 (a) Except as provided in Sections 25 and 26, a certificate of title must contain:

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

23 (2) the name and physical address of the owner, and the mailing address, if different;

24 (3) the name and address of the first secured party indicated in the files of the [office],
25 showing that status, and an indication of the existence of additional security interests, if any;

26 (4) the vehicle identification number;

27 (5) a description of the vehicle including (as required by the [office]) make, model,
28 model year, and body type;

1 (6) all known title brands as required in [this Act or] law other than this [Act], or as
2 previously indicated on a certificate of title created in this or another jurisdiction or an
3 application submitted pursuant to Section 8, using words or abbreviations not symbols and
4 identifying the jurisdiction that originated the title brand; and.

5 (7) the vehicle mileage at the time of the latest transfer of title.

6 (b) If a vehicle is imported from or was previously registered in a jurisdiction that does
7 not require indication of the first security interest on a certificate of title, the certificate of title
8 must include a legend indicating that the vehicle may be subject to an undisclosed security
9 interest or that the vehicle was imported from a jurisdiction that does not require indication of a
10 security interest on the certificate of title. If a valid notice of a security interest is not received by
11 the [office] within [one year] [four months] after creation of the certificate of title, upon
12 application of the owner or a secured party and submission of the certificate of title, the [office],
13 upon request of the owner, shall create a certificate of title that does not include the legend.

14 (c) A certificate of title shall allow for subsequent execution of the certificate of title by
15 the owner.

16 (d) This [Act] does not prohibit or preclude a lawful repossession of, levy on, or
17 statutory or common law lien attaching to, a vehicle covered by a certificate of title, but a
18 certificate of title is not itself subject to garnishment, attachment, levy, or other judicial process.
19 A statutory or common law lien is not invalid by reason of not being indicated on a certificate of
20 title covering the vehicle subject to the lien.

21 **Reporter's Note**

22 This section is derived from Section 9 of the UMVCT. Subsection (d) makes clear that
23 judicial process must be effected against the goods, not the certificate of title. If a certificate of

1 title is being wrongly withheld by a third party, the proper recourse is under Sections 12, 13, 14,
2 15, 18, 19, 21, or 22. For example, a lien creditor could seek possession of the vehicle using
3 legal process, and then obtain a certificate of title under COTA Section 19 or 22.

4 “Title brand” is defined in Section 2. *See also* Section 8, requiring any known title brand to
5 be identified in the application for a certificate of title. Any title brand included on the certificate
6 of title should be described using plain language or common abbreviations, not codes or symbols,
7 so as to be readily understandable in any state. Section 30 is reserved for a state that wants to
8 incorporate its title brand requirements in this [Act].

9 In common usage, a “title brand” is a notation on the face of a certificate of title that provides
10 notice to subsequent purchasers of the damage, condition, or prior use of the vehicle. The 51
11 titling jurisdictions use a wide variety of terms or symbols to brand titles. *See* Section 2(a)(13).
12 This [Act] does not define the specific types of damage or condition that typically give rise to
13 title branding requirements under state law. Previous efforts to establish standard definitions for
14 terms such as “salvage vehicle,” “flood vehicle,” or “rebuilt salvage vehicle” have been
15 contentious.

16 Other law of this or another state will determine if a title brand is required. If a title brand is
17 required, this [Act] requires the use of words or abbreviations rather than symbols to denote the
18 title brand. Furthermore, once a title brand is required, this [Act] requires that the title brand
19 appear on the face of the certificate of title and all subsequent certificates of title issued for the
20 same vehicle by the state. Additionally, once a title brand is required, the title brand of one state
21 must be “carried forward” on the face of a certificate of title subsequently issued by any other
22 state with respect to the same vehicle.

23 Subsection (b) of Section 10 does not refer to other states, as all states provide for indication
24 of at least the first security interest on the certificate of title. Subsection (b) governs vehicles
25 imported from foreign jurisdictions, and provides a grace period for reperfecting in this state for
26 security interests previously perfected by other means in the foreign jurisdiction.
27
28

29 **SECTION 11. REGISTRATION.**

30 31 **SECTION 12. TRANSFER OF TITLE.**

32 (a) If title to a vehicle covered by a certificate of title is transferred, the transferor shall
33 promptly execute the certificate of title to the purchaser pursuant to the requirements of this [Act]
34 and shall promptly deliver any written certificate of title to the purchaser.

35 (b) Execution of a certificate of title by the owner or a person authorized by the owner, to
36 the purchaser or a person authorized by the purchaser, constitutes transfer of title to the

1 purchaser.

2 (c) Except as otherwise provided in this [Act], a transfer of title is not made ineffective
3 between the parties to that transfer, or their assignees, by the failure to execute or deliver the
4 certificate of title as provided in subsections (a) and (b), but the transfer of title is not effective as
5 to other parties until the transfer meets the requirements of subsections (a) and (b).

6 **Reporter's Note**
7

8 Subsections (a) and (b) are intended to provide a simple baseline rule for transfers of title to
9 vehicles covered by a certificate of title. Subsection (b) makes clear that title is transferred
10 immediately upon execution of the certificate of title, even though an application for a new
11 certificate of title has not been made. Subsection (c) clarifies that title to a vehicle covered by a
12 certificate of title also may be transferred without the certificate of title, though such transfers
13 may not be effective as to third parties. *See also* Sections 13-15. Rights under Section 12 are
14 subject to claims asserted under Sections 14 and 15.
15

16 **SECTION 13. NOTICE TO [OFFICE].**

17 (a) The transferor or transferee of title to a vehicle may notify the [office] of the transfer
18 by submitting a record of the executed certificate of title or other signed record evidencing the
19 transfer in accordance with standards and procedures established by the [office]. The record must
20 include the information required in Section 8. Upon receipt of the record, the [office] shall file
21 and index a record of the notice.

22 (b) To obtain a certificate of title pursuant to Section 9 reflecting the transfer, the
23 transferee of the vehicle shall submit to the [office] the executed certificate of title or other
24 signed record evidencing the transfer, together with the information required under Section 8, or
25 any other documentation required by the [office] in accordance with Section 18, 19, 22, or 23, as
26 applicable, including submission of any required fee and tax.

27 **Reporter's Note**

1 Subsection (a) provides a basic legal framework for providing notice of title transfers to the
2 appropriate state office, without application for a certificate of title under Section 8. This is
3 intended to supplement Sections 8 and 9, and (as relevant) Sections 18, 19, 22, and 23,
4 incorporated by reference. *See also* Sections 20-21. The purpose is to allow a transferor or
5 transferee to provide notice supplement to the [office] without meeting the requirements for an
6 application under Section 8.

7 Subsection (b) makes clear that this notice procedure is not a substitute for an application for
8 a certificate of title pursuant to Section 8. To obtain a certificate of title under Section 9, an
9 application must be made pursuant to Section 8, 18, 19, 22 or 23. Subsection (a) merely provides
10 a mechanism for providing notice to the [office] for informational purposes, for whatever
11 purposes the [office] may desire; subsection (a) does not impose any resulting legal
12 consequences. The legal effects of this notice are left to law other than this [Act]. The office
13 that receives this information should provide a procedure to identify, expunge, or segregate
14 contested information in appropriate circumstances.

15 16 17 **SECTION 14. ADVERSE CLAIMS.**

18
19 (a) A purchaser of a vehicle covered by a certificate of title, other than a person in the
20 business of selling or leasing goods of that kind, takes free of any adverse claim to the vehicle or
21 interest in the vehicle not indicated on the certificate of title if the purchaser gives value and
22 receives possession of the vehicle and execution of the certificate of title, in good faith and in
23 accordance with reasonable commercial standards of fair dealing, without notice of the adverse
24 claim to the vehicle or interest in the vehicle, unless the certificate of title contains a statement
25 that the vehicle is or may be subject to security interests not shown on the certificate of title.

26 (b) A person with voidable title to a vehicle has power to transfer a good title to a good
27 faith purchaser for value in accordance with this [Act]. When a vehicle has been delivered under
28 a transaction of purchase the purchaser has such power even though:

- 29 (1) the transferor was deceived as to the identity of the purchaser;
30 (2) the delivery was in return for a check which was later dishonored;
31 (3) it was agreed that the transaction was to be “cash sale;” or

1 (4) the delivery was procured through fraud punishable as larcenous under the
2 criminal law.

3 **Reporter’s Note**

4
5 These provisions are designed to be consistent with UCC Section 2-403, to protect purchasers
6 who rely on the certificate of title, good faith purchasers for value, and buyers in the ordinary
7 course of business (even without a certificate of title), so as to conform certificate of title issues
8 to the equivalent rules in UCC Article 2 and Article 9. *See also* Sections 15 and 26; Article 2A
9 Sections 2A-314 and 2A-315. “Notice” for purposes of subsection (a) is defined at UCC
10 Section 1-201(25), as actual knowledge; “value” is defined at UCC Section 1-201(44).

11 Together Sections 12-15 comprise a package that accommodates electronic and informal
12 transfers while recognizing the primacy of a written certificate of title and protecting buyers in
13 the ordinary course of business. Execution of an electronic certificate of title under Section 12(a)
14 and (b) would have priority over an informal transfer under Section 12(c), while execution of a
15 written certificate of title under Section 14(a) would have priority over both.

16 Section 14(a) allows a purchaser (other than a dealer) to rely on a certificate of title in a
17 commercially reasonable purchase of a vehicle for value and without notice of an adverse claim
18 not indicated on the certificate of title. Other evidence of reliance is not required: Section 14(a)
19 requires only that the “purchaser” (as defined in Section 2) take delivery of the vehicle for
20 “value” and without “notice” of the adverse claim after a valid certificate of title has been created
21 without an indication of the adverse claim. This resolves, in favor of such a purchaser, conflicts
22 between this purchaser and a former owner, secured party, or other claimant whose interest may
23 be superior to the purchaser’s transferor. In this respect Section 14(a) is similar to Article 9
24 Section 9-337, except that Section 14(a) applies to intrastate transfers. Subsections (b) and (c)
25 are based on Article 2 sections 2-403(1) and (2).
26

27 **SECTION 15. TRANSFEREE OF VEHICLE COVERED BY CERTIFICATE OF** 28 **TITLE.**

29 (a) Except as otherwise provided in this [Act], a purchaser or other transferee of a vehicle
30 covered by a certificate of title that does not obtain a valid execution of the certificate of title
31 covering the vehicle takes subject to an interest in the vehicle indicated on the certificate of title,
32 and a security interest not so indicated if the certificate of title contains a statement that the
33 vehicle is or may be subject to security interests not shown on the certificate of title.

1 (b) A buyer in the ordinary course of business or a lessee in the ordinary course of
2 business, even if that person does not obtain execution of the certificate of title to that person,
3 takes free of any security interest created by the seller or lessor, including an interest indicated on
4 the certificate of title or a certificate of origin.

5 (c) Any entrusting of possession of a vehicle to a merchant who deals in goods of that
6 kind gives the merchant the power to transfer all rights of the entruster to a buyer in the ordinary
7 course of business, even if the certificate of title was not executed to the buyer.

8 **Reporter's Note**

9
10 Subsection (a) states the basic common law rule of assignment, which also runs throughout
11 the UCC: subject to specified exceptions, the transferee takes the rights of the transferor. *See also*
12 Sections 12 and 14. Subsection (a) also reflects the Article 9 principle that rights under the
13 certificate of title are paramount. *See, e.g.,* Article 9 Sections 9-311, 9-335, 9-337, 9-338. This
14 represents the base line rule, with subsection (b) the exception. *See also* Sections 14, 16, and 25-
15 26; UCC Article 2A Section 2A-304 and Official Comment.

16 Subsection (b) recognizes an exception for a buyer in the ordinary course of business
17 (BIOCB), based on Article 9 Section 9-320. *See also* Section 14(c). Section 9-320 cuts off
18 security interests created by the seller. Subsection (b) recognizes and incorporates this UCC
19 provision in the context of a certificate of title transaction, and specifies that a buyer of a vehicle
20 can be a BIOCB even if that person does not obtain a certificate of title. *See also* UCC
21 Sections 2A-304, 2A-305.

22 The result is to allow the BIOCB of a vehicle covered by a certificate of title to take free of
23 claims of and security interests created by the seller (*e.g.,* an inventory security interest created by
24 an auto dealer) even if the secured party holds the certificate of title; but like Section 9-320 it
25 does not allow the BIOCB to take free of a security interest created by a consignor and perfected
26 by certificate of title lien entry, because that is not a case of the security interest created by the
27 seller, unless the consignor and dealer/consignee are the same or are so closely connected as to be
28 treated as the same entity. This reflects long-standing UCC policy that even a BIOCB only takes
29 free of security interests created by his or her seller, not interests of other or prior parties. *But see*
30 Section 14.

31 Thus, Section 15 is consistent with the UCC and the case law. It also resolves a related issue:
32 Can a buyer of a vehicle from a dealer be a BIOCB without execution of the certificate of title?
33 The UCC definition of BIOCB is not specific on this, but is broad enough to accommodate this
34 as a common dealer practice. The cases are split. However, this is a common dealer practice, and
35 subsection (b) protects a consumer buying from a dealer despite the lack of a certificate of title
36 execution. Rights as between the dealer and its secured party, such as the priorities of claims to
37 the sales proceeds, are left to other law.

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

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

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

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

16 (d) With respect to a security interest or other interest indicated in the files of the [office]
17 and not noted on a written certificate of title, if a search of the files of the [office] using correct
18 required information, using the [office's] standard search logic, if any, does not disclose the
19 correct information, the failure to provide the information accurately in the record is seriously
20 misleading.

1 **Reporter’s Note**

2
3 Generally, a certificate of title, application for a certificate of title, certificate of origin, lien
4 entry form, or other record that fails to state accurately the name and address of the owner, the
5 name and address of the secured party, or the description of the vehicle is not seriously
6 misleading solely for that reason. This section is modeled on Article 9 Sections 9-108, 9-337,
7 9-338, 9-502, and 9-506. The purpose of subsection (a) is to prevent harmless errors from
8 invalidating a transaction, inasmuch as errors in the parties’ names or an error in the description
9 of the vehicle often will not mislead parties to a certificate of title transaction. This issue is
10 different than under Article 9, where an error in the debtor’s name can mislead filing searches.
11 Thus, no equivalent to Article 9 Section 9-506(c) is needed
12 if the security interest is noted on a certificate of title. For other cases, subsection (d) provides a
13 rule equivalent to Section 9-506(c).

14 Subsection (b) provides a sanction, short of invalidation, where a seriously misleading error
15 causes damages to a reliance party. *See* subsection (d) for a procedure to determine if an error
16 involving a security interest is seriously misleading. It is not misleading for a secured party or
17 lessor to be indicated as the owner on the certificate of title. *See* Section 26(b).

18 Subsection (c) provides general rules governing errors or omissions in records pertaining to
19 certificates of title, modeled on Article 9 Section 9-506(a) and (b). Except as provided at
20 subsection (d), an error in the name of the owner or secured party, or the description of the
21 vehicle, is unlikely to prejudice third parties in a certificate of title transaction. The exception is
22 described at subsection (d). The exception at subsection (d) is necessary where the search
23 depends on the files of the [office], because in this context an error in the name of the owner or
24 vehicle identification number could result in a record being mis-filed or not discovered in a
25 proper search of the files of the [office].
26
27

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

29 (a) Upon creation of a certificate of title, the [office] shall send the certificate of title, or a
30 record evidencing the certificate of title, to the first secured party indicated on the certificate of
31 title, if any, [at the address shown on the lien entry form submitted by that secured party,] and
32 shall send a record evidencing the certificate of title to the owner of the vehicle at the address
33 shown in the application unless that information has previously been provided to the owner. If
34 there is no secured party indicated in the files of the [office], the certificate of title shall be sent to
35 the owner. As applicable, the secured party or owner may elect to have the [office] create a
36 written certificate of title by delivering in the form and manner specified at subsections (c) and

1 (d) a signed record requesting that creation in substantially the form provided in subsection (b).
2 The owner may so elect only if all security interests indicated in the files of the [office] have
3 been terminated].

4 (b) A request under subsection (a) by the owner or secured party for creation of a written
5 certificate of title must be provided to the [office] in substantially the following form:

6 Request for a Written Certificate of Title

7 [Date]

8 To: _____

9 [Addressee]

10 _____

11 [Address]

12 _____

13 From: _____

14 [Owner's name or Secured Party]

15 _____

16 [Address]

17 _____

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

19 This is to request that a written certificate of title be created and sent to the [owner or
20 secured party] at the above address.

21 _____

22 [Authentication of Owner or Secured Party]

23 [end of form]

24 (c) Upon receipt of a request for a written certificate of title under subsection (b), the
25 [office] shall create and send to the secured party, or the owner if no security interest is indicated
26 in the files of the [office], the requested written certificate of title within [15] business days.

1 (d) Upon creation of a written certificate of title, any previously existing electronic
2 certificate of title is replaced by the written certificate of title and is no longer a certificate of
3 title.

4 **Reporter’s Note**

5 Derived from UMVCT Section 10. Note that Section 8 (Application for a Certificate of Title)
6 and Section 26 (regarding lien entry forms) provide for optional use of an email address.

7 The determination by the [office] of the first secured party indicated on the certificate of title,
8 as required under this section, is an administrative determination for purposes of this section and
9 is not dispositive of priority issues governed by UCC Article 9.

10 This section does not require creation of a written certificate of title, except at the request of
11 the first secured party [or owner]; if a written certificate of title is issued it must be delivered to
12 the first secured party, if any. This is designed to make the state a certificate of title “title
13 holding” state if the option to have a written certificate of title is exercised. However, while “title
14 holding” may be useful for anti-fraud purposes, it also may create delays for subsequent
15 purchasers or creditors who need the certificate of title to perfect a new security interest or
16 otherwise execute a subsequent transaction. Under the U.S. Supreme Court’s rationale in the
17 *Fink* case, such delays may be legally fatal. *See* Section 25. Therefore this section allows the
18 owner to request issuance of a written certificate of title to facilitate subsequent transactions,
19 though the bracketed language would significantly limit this. This section also should be paired
20 with a means to allow subsequent parties to search for and file lien entry forms without having
21 access to the certificate of title. *See* Sections 12-15, and 25-26.

22 23 24 **SECTION 18. SECURED PARTY TRANSFER OF TITLE.**

25 (a) In this section, “secured party transfer statement” means a record authenticated by a
26 secured party stating:

27 (1) that the owner of the vehicle indicated in the files of the [office] has defaulted in
28 connection with an obligation secured by a security interest in the vehicle granted to the secured
29 party;

30 (2) that the secured party is exercising or has exercised post-default remedies with
31 respect to the vehicle;

1 (3) that, by reason of the exercise, the secured party or another purchaser has acquired
2 the rights of the owner of the vehicle indicated in the files of the [office] for purposes of this
3 [Act];

4 (4) the name and last known mailing address of the owner of the vehicle indicated in
5 the files of the [office], the secured party, and any other purchaser, and any other information
6 required by Section 8(a); and

7 (5) either that the secured party does not have possession of the certificate of title
8 created in the name of the owner of the vehicle indicated in the files of the [office] or that the
9 secured party is delivering the certificate of title to the [office] along with the secured party
10 transfer statement.

11 (b) Compliance by the secured party with subsection (a) entitles the secured party to the
12 creation of a certificate of title showing the secured party or other purchaser as owner of the
13 vehicle specified in the secured party transfer statement. If a secured party transfer statement is
14 delivered to the [office] with the applicable fee and, as applicable, any previously created
15 certificate of title, unless the secured party transfer statement is rejected by the [office] for a
16 reason set forth in Section 9, the [office] shall:

- 17 (1) accept the secured party transfer statement;
- 18 (2) promptly amend its records to reflect the transfer;
- 19 (3) cancel the certificate of title issued in the name of the former owner, whether or
20 not the certificate of title has been delivered to the [office]; and
- 21 (4) create a new certificate of title in the name of the secured party or other purchaser.

1 (c) The creation of a certificate of title under subsection(b) is not of itself a disposition of
2 the vehicle under [Uniform Commercial Code Article 9] and does not of itself relieve the secured
3 party of its duties under that statute, unless it otherwise qualifies as a disposition under that
4 statute.

5
6 **SECTION 19. OTHER TRANSFER OF TITLE BY OPERATION OF LAW.**

7 (a) In this section:

8 (1) “Transfer by operation of law” means a transfer by which a transferee succeeds to
9 the interest of an owner of a vehicle by operation of law, including a transfer on account of the
10 owner’s death, divorce, merger, consolidation, dissolution, or bankruptcy or through the exercise
11 of the rights of a lien creditor.

12 (2) “Transfer-by-law statement” means a record authenticated by a transferee stating:

13 (A) that by operation of law the transferee has acquired or has the right to acquire
14 the interest of the owner in a vehicle as indicated in the files of the [office].

15 (B) the name and mailing address of the owner as indicated in the files of the
16 [office] and the transferee and any other information required by Section 8(a);

17 (C) that the transfer-by-law statement is accompanied by documentation of the
18 transferee’s interest or right to acquire the interest of the owner of the vehicle as indicated in the
19 files of the [office]; and

20 (D) either that the transferee does not have possession of the certificate of title
21 created in the name of the owner as indicated in the files of the [office] or that the transferee is
22 delivering the certificate to title to the [office] along with the transfer-by-law statement.

1 (b) [Compliance by the transferee with this section entitles the transferee to creation of a
2 certificate of title showing the transferee as owner of the vehicle specified in the transfer-by-law
3 statement.] If a transfer-by-law statement is delivered to the [office] with the applicable fee,
4 documentation satisfactory to the [office] as to the transferee's interest or right to acquire the
5 interest of the owner in the vehicle as indicated in the files of the [office] and, as applicable, the
6 certificate of title in the name of the owner as indicated in the files of the [office], unless the
7 transfer-by-law statement is rejected by the [office] for a reason set forth in Section 9, the [office]
8 shall:

- 9 (1) accept the transfer-by-law statement;
- 10 (2) promptly amend its records to reflect the transfer;
- 11 (3) cancel the certificate of title issued in the name of the former owner, whether or
12 not the certificate of title has been delivered to the [office]; and
- 13 (4) create a new certificate of title in the name of the transferee.

14 (c) This section does not apply to the exercise of post-default remedies by a secured party
15 having a security interest in a vehicle.

16

17 **SECTION 20. EXAMINATION OF FILES.**

18 Upon application for a certificate of title, the [office] shall ensure that any new certificate of
19 title created pursuant to that application reflects the information required under Section 10, as
20 contained in the files of the [office]. If the examination of the files indicates a security interest,
21 the name and security interest status of the first secured party must be indicated on the certificate

1 of title; if there are additional secured parties, there must be an indication to that effect on the
2 certificate of title.

3 **Reporter's Note**

4 This is derived from UMVCT Section 7. *See also* Sections 10(a), 21. The application for a
5 certificate of title is governed by Sections 8 and 9.

6
7
8
9
10 **SECTION 21. MAINTENANCE OF FILES.**

11 (a) The [office] shall maintain or provide for maintenance of files of the information
12 contained in all certificates of title created in this state, transferred to the [office], or otherwise
13 required to be maintained under this [Act], and all lien entry forms and applications for
14 certificates of title, accessible by[:

15 (1) the vehicle identification number for the vehicle covered by the certificate of
16 title [; and

17 (2) other indexing as provided by the [office]].

18 (b) Each entry maintained under subsection (a) must also include any security interests,
19 title brands, or stolen property reports applicable to the vehicle, including the name and address
20 of any secured party or claimant to ownership.

21 (c) The information required in this section [, except _____,] is a public record
22 [accessible pursuant to this [Act]].

23 **Reporter's Note**

24 Derived from UMVCT Section 8. Companion to COTA Section 20. This use is a counterpart
25 to Article 9 Section 9-519(a).

26 The [office] is required to accept each application for a certificate of title that is submitted in
27 accordance with Sections 8 and 9 and, if the files of that office indicate that all security interests

1 have been terminated to create a written or electronic certificate of title, at the option of the
2 owner or secured party, in accordance with this [Act]. *See* Sections 13 and 17.
3

4 **SECTION 22. APPLICATION FOR TRANSFER WITHOUT CERTIFICATE OF**
5 **TITLE.**

6 (a) The [office] shall create a certificate of title upon receiving an application that is not
7 accompanied by submission of an executed certificate of title or certificate of origin, if:

8 (1) all other requirements of an application under Sections 8 and 9 are met;

9 (2) the applicant has provided an affidavit stating facts which indicate that the
10 applicant is entitled to a transfer of title, at least 30 days prior notice of the application has been
11 sent to all parties with an interest in the vehicle as indicated in the files of the [office], and no
12 objection has been received by the [office]; and

13 (3) the applicant presents other documentation as may be required by the [office] to
14 evidence the applicant's interest, and there is no credible evidence of theft, fraud, or undisclosed
15 or unsatisfied security interests, title brands, liens, or adverse claims submitted to the [office].

16 (b) The [office] may require an applicant under subsection (a) to post a bond or provide
17 an equivalent source of indemnity or security, in an amount equal to no more than twice the value
18 of the vehicle as determined by the [office], in a form prescribed by the [office], which provides
19 for indemnity of any owner, purchaser, secured party, or other claimant, for any expense, loss,
20 delay, or direct damage, including reasonable attorney's fees but not consequential damages,
21 resulting from creation of a certificate of title under subsection (a).

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

1 (d) In addition to, or in lieu of, the requirements of subsections (b) and (c), the [office]
2 may include in the certificate of title created under subsection (a) a legend indicating that the
3 certificate of title was created without submission of an executed certificate of title. If a claim
4 adverse to interests indicated on the certificate of title has not been received by the [office]
5 within three years after creation of the certificate of title, upon a request in a form and manner
6 specified by the [office], the [office] shall remove the legend from the certificate of title .

7 **Reporter's Note**

8 Derived from UMVCT Section 11. *See also* Section 14, and Sections 18, 19, and 23. Section
9 22 may be used, *e.g.*, to request a certificate of title to effectuate a sale, gift, or other transfer
10 where the seller, donor, or other transferor is unable or unwilling to obtain or execute a certificate
11 of title. It requires a supporting affidavit, 30 days prior notice to all known interested parties, and
12 (at the option of the [office]): other documentation (*e.g.*, a bill of sale or sales contract and
13 cancelled check or other evidence of payment); a bond; and/or a legend on the certificate of title,
14 as additional potential safeguards to supplement the procedures at Sections 8 and 9.

15 This section is not for use by an owner of record seeking to replace a lost, stolen, or destroyed
16 certificate of title; that procedure is governed by Section 23. Section 23 is designed to allow a
17 replacement title to be obtained by the same owner; it does not directly involve a transfer of title.
18 In contrast, Section 22 provides for a transfer of title where the applicant presents evidence that
19 he or she is entitled to such a transfer, satisfactory to the [office], and the transferor is unable or
20 unwilling to deliver the certificate of title as otherwise required.

21
22
23
24 **SECTION 23. LOST, STOLEN, OR DESTROYED CERTIFICATES OF TITLE;
25 REPLACEMENT TITLES.**

26 (a) If a certificate of title is lost, stolen, mutilated, or destroyed, or otherwise becomes
27 unavailable or illegible, the first secured party, as indicated in the files of the [office], may make
28 application for and obtain a replacement certificate of title by furnishing information satisfactory
29 to the [office]. If there is no secured party indicated in the files of the [office], the owner may
30 apply for a replacement certificate of title pursuant to this section.

1 (b) An application for a replacement certificate of title must be submitted in a record
2 signed by the applicant.

3 (c) Each replacement certificate of title created by the [office] shall conspicuously
4 indicate that it is a replacement.

5 (d) If a person receiving a replacement certificate of title subsequently obtains possession
6 of the original certificate of title, the person shall promptly destroy the original certificate of title.

7 **Reporter's Note**

8
9 Derived from UMVCT Section 13. A purchaser to whom a replacement certificate of title is
10 executed can qualify as a good faith purchaser (GFP) or BIOCB, *e.g.*, under Section 14 or 15,
11 UCC Article 2 Section 2-403, and Article 9 Sections 9-320, 9-337, and 9-338, if all other
12 requirements are met. The notice required under subsection (c) does not give notice sufficient to
13 bar GFP or BIOCB status.
14

15
16 **SECTION 24. ODOMETER DISCLOSURE**

17 [Free-standing odometer disclosure]

18 **Reporter's Note**

19 New. *See also* definition of electronic certificate of title at COTA Section 2. The UETA and
20 ESIGN generally eliminate barriers to electronic signatures in other law.
21

22
23 **SECTION 25. RECEIPT OF LIEN ENTRY FORM.**

24 (a) Subject to Section 16 and except as otherwise provided in this section a lien entry
25 form is effective upon receipt by the [office] of a record sufficient under this section and tender
26 of the applicable fee.

27 (b) Subject to Section 16, a lien entry form is sufficient if it is a record that includes the
28 name of the debtor, the name of a secured party or a representative of a secured party, and a

1 description of the collateral, meeting the requirements of Uniform Commercial Code Sections 9-
2 108 and 9-503.

3 (c) Receipt does not occur with respect to a record of a lien entry form that the [office]
4 rejects because:

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

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

8 (3) the record does not contain the name and mailing address of the debtor and a
9 secured party; or

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

11 (d) The [office] shall maintain a public record showing the date of receipt of each lien
12 entry form that is effective under subsection (a), and shall make evidence of that record available
13 on request.

14 (e) If the [office] rejects a lien entry form, the [office] shall notify the person that
15 presented the form of the reasons for the rejection and the date and time the form would have
16 been received had the [office] not rejected it. The [office] shall send this notice not later than
17 midnight of the second business day after the business day on which the [office] received
18 delivery of the form. If the [office] does not send proper notice of rejection of a lien entry form
19 by midnight of the second business day after the business day on which the form was physically
20 delivered to the [office], the form is effective as of the business day on which it was physically
21 delivered to the [office].

1
2
3 **Reporter’s Note**

4 This section is modeled on UCC Section 9-516. It addresses the same issues as
5 Section 9-516, *e.g.*, by specifying that a lien entry form is effective on receipt by the appropriate
6 office and payment of the required fee, unless it is properly rejected for specified reasons and
7 within a specified time. Thus, perfection of the security interest occurs upon proper submission
8 of the lien entry form, even if the security interest is never indicated in the files of the [office] or
9 on the certificate of title, assuming there has been attachment under UCC Article 9. Errors and
10 omissions in the lien entry form or certificate of title are governed by Section 16. For example,
11 an erroneous secured party name normally will be a harmless error. *Id.* References to the UCC
12 incorporate by reference the related provisions of Article 9.

13 Rules governing an application for a certificate of title are at Sections 8 and 9. Adverse
14 claims are covered by Section 14. The secured party may qualify as a “purchaser” as that term is
15 defined in Section 2, *e.g.*, for purposes of the Section 14 provisions governing adverse claims.

16 Pursuant to Article 9 Section 9-311(a), this [Act] displaces Article 9 only with respect to the
17 Article 9 provisions requiring the filing of a financing statement to perfect a security interest.
18 Other Article 9 rules, such as those governing attachment (Section 9-203), priority (Article 9
19 Part 3), and enforcement (Article 9 Part 6) continue to apply. Moreover, under Article 9
20 Section 9-311(b), unless displaced by the specific provisions of this [Act], to the extent
21 applicable, the filing provisions of Article 9 Part 5 may continue to be relevant or to supplement
22 the provisions of this [Act]. For example, *see* Article 9 Sections 9-311(d) and 9-313(b),
23 Section 9-508.

24 Subsection (e) provides a procedure to require the [office] to notify a secured party if a lien
25 entry form is rejected. The time limit for this notice reflects a balancing of the need for secured
26 parties to receive prompt notice of their need to take remedial action, with the need of the [office]
27 for sufficient time to process incoming forms. If timely and proper notice is not sent under this
28 subsection, the lien entry form is effective according to its terms even though it may not have
29 been met the requirements of this [Act] and recorded and indexed in the files of the [office]. In
30 this circumstance, if the other requirements of Article 9 are met, the security interest will be
31 perfected by the lien entry form. Of course, if the lien entry form is significantly defective on its
32 face, *e.g.*, no debtor’s name or a completely erroneous description of collateral, the error will
33 render it ineffective despite this provision. *See* Section 16. Priorities between the secured party
34 and those who may be prejudiced by the failure of the [office] to file and index the lien entry
35 form, or to indicate it on the certificate of title, are covered by other sections, *e.g.*, Sections 14-
36 16.

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39 **SECTION 26. PERFECTION OF SECURITY INTERESTS.**

40 (a) Except as otherwise provided in this [Act] or [the Uniform Commercial Code], if a
41 lien entry form for a vehicle covered by a certificate of title complies with Section 25, the

1 security interest represented by the lien entry form is perfected, upon attachment of the security
2 interest pursuant to [Uniform Commercial Code Section 9-203].

3 (b) The [office] may issue a certificate of title with the name of a lessor, consignee or
4 other bailor, or secured party as owner instead of as secured party. A certificate of title naming
5 such party as owner perfects the interest in the vehicle held by such party as lessor, consignee or
6 other bailor or secured party. The [office] may treat this party as the owner for all purposes.

7 (c) The [office] may reject a lien entry form only for a reason and in the manner set forth
8 in Section 25. Rejection for any other reason or in any other manner constitutes receipt of the
9 lien entry form and the lien entry form is effective under Section 25 and for purposes of
10 perfection under subsection (a). A lien entry form that does not meet the requirements of Section
11 25 is received and is effective under Section 25 and constitutes perfection under subsection (a),
12 unless it is rejected pursuant to Section 25. The failure of the [office] to index a record correctly
13 or to indicate the security interest on the certificate of title does not affect the receipt or
14 effectiveness of the record as constituting perfection.

15 (d) A secured party may assign or otherwise transfer its rights as secured party under this
16 [Act], and the transfer is effective whether or not it is reflected in the files of the [office] or
17 indicated on the certificate of title. The assignment or transfer vests in the transferee any rights
18 of the transferor under this [Act] and the [Uniform Commercial Code] including, as applicable,
19 perfection of the security interest. The perfection remains effective even if the transfer and
20 transferee are not indicated in the files of the [office] or on the certificate of title; however, a
21 purchaser of the vehicle or a subsequent transferee of the secured party takes free of an interest

1 not indicated in the files of the [office] or on the certificate of title to the extent the files of the
2 [office] or on the certificate of title.

3 **Reporter's Note**

4
5 Derived from UCC Article 9 Sections 9-310(a), 9-516(a) and (b), 9-517, and 9-520(a), (b),
6 and (c). The purpose is to establish a system for perfection of security interests by filing a record
7 of a lien entry form with the office that creates certificates of title, or its agent, even if the secured
8 party cannot obtain and surrender the certificate of title. Similarly, perfection does not require
9 notation on a written certificate of title, although that does confer an additional measure of
10 protection. *See* Sections 12, 14, and 15. Perfection by delivery of a lien entry form under
11 Sections 25 and 26, even without notation on a written certificate of title, is sufficient for
12 perfection, *e.g.*, within the 20 day grace period required under Bankruptcy Code
13 Section 547(3)(B) and the Supreme Court's *Fink* decision, since the secured party may not be
14 able to obtain the certificate of title from the prior secured party in time to meet the 20 day
15 deadline.

16 This section is subject to qualifications and exceptions elsewhere in this [Act] and the UCC,
17 *e.g.*, providing for perfection by filing or possession in limited circumstances (Article 9
18 Sections 9-311(d), 9-313), or requiring attachment as a prerequisite to perfection (Section 26,
19 Article 9 Sections 9-203, and 9-308(a)).

20 Thus perfection under Sections 25-26, without notation on a written certificate of title, would
21 be effective against lien creditors, but not against a competing party who relies on the certificate
22 of title, pursuant to Sections 12-17. For example, a competing purchaser would prevail under
23 Section 14.

24 Subsection (d) makes clear that retitling is not necessary upon assignment of a security
25 interest. This provision is modeled partly on Article 9 Section 9-338 and makes clear that failure
26 to indicate a transfer of the security interest in the files of the [office] or on the certificate of title
27 does not affect the perfection or enforcement of the security interest, in favor of the transferee,
28 except that a purchaser of the vehicle or subsequent transferee of the security interest is entitled
29 to rely on the certificate of title or files of the office and takes free of an interest not so indicated
30 if the purchaser or subsequent transferee gives value in detrimental reliance on the certificate of
31 title or files of the [office]. *See also* Section 16. For example, if a purchaser of the vehicle
32 makes payment in full of the secured debt to the secured party indicated on the certificate of title,
33 that debt would be discharged even if the debt and security interest had been assigned to another
34 creditor.

35 A model lien entry form can be provided, consistent with the model forms in Article 9
36 Section 9-521.
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Reporter's Note

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Left blank to allow a state to insert its title brand statute. *See* also definition of “title brand” in Section 2, and Sections 8, 9, and 10.]