

D R A F T

FOR DISCUSSION ONLY

# UNIFORM CERTIFICATE OF TITLE ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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October 12, 2004

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# UNIFORM CERTIFICATE OF TITLE ACT

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# **CERTIFICATE OF TITLE ACT**

## **Prefatory Note**

This Certificate of Title Act (Act) is intended to respond to several principal, though by no means exclusive, factors affecting transfers of interests in motor vehicles: Diversity of state treatment; the increasing use of electronic records, including efforts to reduce and prevent title and other vehicle fraud, and contracting; evolving commercial practices and current legal issues; and the impact of revised Article 9 of the Uniform Commercial Code.

### **Principal Purposes of the Act**

Each year, on the order of 70 million motor vehicles are titled in the United States. While there is almost universal consistency in some industry standards, for example Vehicle Identification Number (VIN) usage, these vehicles are titled by the states under some sixteen separate types of systems, virtually none of which is entirely compatible with the others for purposes of information exchange and title interchange. The states also vary in designation of the officials who administer titles and transfers, and collect state taxes, and there are variations in the definitional scope of titling statutes. As with other states' records, the move from paper to electronic records is not uniform either within or among the states.

The increasing use of electronic records and contracting practices by public officials, industries, and consumers, has in some transactions rendered the paper certificate of title an anachronism. While some transactions, for example casual sales between individuals and some lending transactions, continue to require the use of paper certificates of title, in many other transactions involving vehicles from manufacture through salvage, none of the governments, manufacturers, financiers, owners/lessees, or others involved need be denied the convenience or economies of electronic records.

Industry practices have evolved significantly over the past decades, and many of those practices can be accommodated by electronic titling with no adverse impact on either transfers of interests or other statutes and regulations, for example, involving the collection of sales and use taxes, the requirements of safety inspections, and the disclosure of odometer information, which often piggyback on the title transfer process. Greater uniformity in the core principles governing title administration and the movement toward electronics will facilitate development of consistent approaches to information and title interchange and discourage fraud. Moreover, the recent revision and nationwide enactment of revised Uniform Commercial Code Article 9 has highlighted some related deficiencies with respect to existing certificate of title laws and regulations.

In addition, as business conditions and practices have evolved, state certificate of title laws that are nonuniform and sometimes outmoded have become inadequate to deal with current and emerging issues. The need for a consistent informational structure and uniform rules dealing

with common title problems has become increasingly apparent.

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

### Electronic and Paper Titles — Enactment Flexibility

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

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

### Study and Drafting History

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

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

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

### Matters of Scope

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

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

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

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

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

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

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

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

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

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

#### Focus on Title Issues

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

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

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



1                                   **UNIFORM CERTIFICATE OF TITLE ACT**

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

4                   **SECTION 2. APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.**  
5 Unless displaced by the particular provisions of this [act], the principles of law and equity  
6 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                                   (1)     to simplify, clarify, and modernize the law governing certificates of title;  
12                                   (2)     to permit the continued expansion of commercial practices through  
13   custom, usage, and agreement of the parties; and  
14                                   (3)     to make uniform the law among the various jurisdictions.]  
15  
16  
17  
18

19                   **SECTION 3. DEFINITIONS.**

20                                   (a) In this [act]:

21                                   (1) “Buyer” means a person that buys or contracts to buy an ownership  
22 interest in a vehicle.

23                                   (2) “Buyer in ordinary course of business” means a person that buys a  
24 vehicle in good faith, without knowledge that the sale violates the rights of another person in the  
25 vehicle, and in ordinary course from a person, other than a pawnbroker, in the business of selling  
26 vehicles of that kind. A person buys a vehicle in ordinary course if the sale comports with the  
27 usual or customary practices in the kind of business in which the seller is engaged or with the

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

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

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

13 (5) "Certificate of title" means the record, created or authorized by the  
14 office, that is evidence of ownership of a vehicle and designated a certificate of title by the office.

15 (6) "Create," with respect to a certificate of title, means to bring the  
16 certificate of title into existence by making or authorizing the record that constitutes the  
17 certificate of title.

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

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

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

4                   (10) “Electronic certificate of title” means a certificate of title consisting of  
5     information that is stored solely in an electronic medium and retrievable in perceivable 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 for the  
8     purpose of transferring ownership of the vehicle covered by the certificate.

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

11                  (13) “Lessee in ordinary course of business” means a person that leases a  
12    vehicle in good faith, without knowledge that the lease violates the rights of another person, and  
13    in ordinary course of business from a person, other than a pawnbroker, in the business of selling  
14    or leasing vehicles of that kind. A person leases in ordinary course if the lease to the person  
15    comports with the usual or customary practices in the kind of business in which the lessor is  
16    engaged or with the lessor’s own usual and customary practices. A lessee in ordinary course of  
17    business may lease for cash, by exchange of other property, or on secured or unsecured credit,  
18    and may acquire a vehicle or certificate of title covering a vehicle under a preexisting lease  
19    contract. Only a lessee that takes possession of the vehicle or has a right to recover the vehicle  
20    from the lessor under [Uniform Commercial Code Article 2A] may be a lessee in ordinary course  
21    of business. A person that acquires a vehicle in bulk or as security for or in total or partial  
22    satisfaction of a money debt is not a lessee in ordinary course of business.

1 (14) “Lien creditor” means:

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

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

6 (C) a trustee in bankruptcy from the date of the filing of the  
7 petition; or

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

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

11 (16) “Office” means [insert name of relevant department or agency in  
12 enacting state].

13 (17) “Owner” means a person having legal title to a vehicle.

14 (18) “Owner of record” means the owner of a vehicle as indicated in the  
15 files of the office.

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

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

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

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

3                   (23) “Secured party” means:

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

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

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

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

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

15                   (24) “Secured party of record” means the secured party first indicated in  
16 the files of the office.

17                   (25) “Security interest” means an interest in goods that secures payment or  
18 performance of an obligation. The term includes any interest of a consignor and a buyer of  
19 accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject  
20 to [Uniform Commercial Code Article 9]. The term does not include the special property interest  
21 of a buyer of goods on identification of those goods to a contract for sale under [Uniform  
22 Commercial Code Section 2-401], but a buyer may also acquire a security interest by complying

1 with [Uniform Commercial Code Article 9]. Except as otherwise provided in [Uniform  
2 Commercial Code Section 2-505], the right of a seller or lessor of goods under [Uniform  
3 Commercial Code Article 2 or 2A] to retain or acquire possession of the goods is not a security  
4 interest, but a seller or lessor may also acquire a security interest by complying with [Uniform  
5 Commercial Code Article 9]. The retention or reservation of title by a seller of goods  
6 notwithstanding shipment or delivery to the buyer under [Uniform Commercial Code Section 2-  
7 401] is limited in effect to a reservation of a security interest. Whether a transaction in the form  
8 of a lease creates a security interest is determined pursuant to [Uniform Commercial Code  
9 Section 1-203].

10 (26) “Security interest statement” means a record, created or authorized by  
11 a secured party, that indicates a security interest in a vehicle.

12 (27) “Sign” means, with present intent to authenticate or adopt a record,  
13 to:

14 (A) make or adopt a tangible symbol; or

15 (B) attach to or logically associate with the record an electronic  
16 sound, symbol, or process.

17 (28) “State” means a state of the United States, the District of Columbia,  
18 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
19 jurisdiction of the United States.

20 (29) “Termination statement” means a record, created or authorized by the  
21 secured party under Section 24 or the debtor under Section 22, that:

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

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

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

6 (31) “Transfer” means to convey, voluntarily or involuntarily, an interest  
7 in a vehicle.

8 (32) “Transferee” means a person that takes by transfer.

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

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

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

15 (C) a wheelchair or similar device designed for use by an  
16 individual having a physical impairment[.][; or]

17 [(D) manufactured home.]

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

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

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

- (1) “Account debtor,” [UCC Section 9-102(a)(3)].
- (2) “Agreement,” [UCC Section 1-201(b)(3)].
- (3) “Collateral,” [UCC Section 9-102(a)(12)].
- (4) “Debtor,” [UCC Section 9-102(a)(28)].
- (5) “Good faith,” [UCC Section 1-201(b)(20)].
- (6) “Lease,” [UCC Section 2A-103(a)(j)].
- (7) “Lessee,” [UCC Section 2A-103(1)(n)].
- (8) “Lessor,” [UCC Section 2A-103(a)(p)].
- (9) “Manufactured home” [UCC Section 9-102(a)(53)].
- (10) “Merchant,” [UCC Section 2-104(1)].
- (11) “Notice; Knowledge,” [UCC Section 1-202].
- (12) “Representative,” [UCC Section 1-201(b)(33)].
- (13) “Sale,” [UCC Section 2-106(1)].
- (14) “Security agreement,” [UCC Section 9-102(a)(73)].
- (15) “Seller,” [UCC Section 2-103(1)(o)].
- (16) “Send,” [UCC Section 1-201(b)(36)].
- (17) “Value,” [UCC Section 1-204].

*Legislative Note:*

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

**Preliminary Comments**

Section 3(a)(4) makes clear that a certificate of origin is a temporary record that describes the vehicle, its manufacturer, and each seller and purchaser during the period between manufacture of the vehicle and creation of the first certificate of title. A certificate of origin may



1 be created or authorized by the manufacturer or, in the case of a vehicle manufactured outside the  
2 United States, by the importer of the vehicle. The certificate of origin is submitted to the office  
3 that creates the first certificate of title and is to be cancelled at that time. *See also* Sections 6, 7,  
4 9, 13, and 21.

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

11  
12 In addition this definition of certificate of title includes receipt by the office of a security  
13 interest statement pursuant to Section 24. This is needed because it may be necessary to perfect a  
14 security interest pursuant to Section 25(a), by receipt of a security interest statement under  
15 Section 24, before the office has received an application for a certificate of title under Section 9  
16 and 10. Thus, in the absence of a certificate of title created under Sections 9 and 10, a security  
17 interest statement received pursuant to Section 26 will create a certificate of title for purposes of  
18 this [act], including choice of law under Section 4 and perfection under Section 25.

19  
20 The definition requires a certificate of title to have four basic elements: (1) a record; (2)  
21 created or authorized by the appropriate office of this State; (3) evidencing title to a vehicle or  
22 indicating perfection of a security interest; and (4) created pursuant to provisions in this [act]  
23 providing (in conjunction with UCC Article 9) for perfection of security interests. *See also* the  
24 requirements for creation of a certificate of title pursuant to this [act], at Sections 9, 10, and 11;  
25 provisions governing security interest statements at Sections 24, 25, and 26; choice of law rules  
26 at Section 4. Pursuant to Section 4(a), for purposes of Section 4 “certificate of title” includes one  
27 created pursuant to the law of any jurisdiction.

28  
29 The definition of “certificate of title” is different from UCC Article 9 Section 9-  
30 102(a)(10) in some important ways. The Article 9 definition incorporates by reference the  
31 standards of the applicable certificate of title law. UCOTA is that law, and therefore cannot  
32 directly use the Article 9 incorporation-by-reference approach. Moreover, as noted this [act]  
33 provides for perfection of a security interest on receipt by the office of a security interest  
34 statement, subject to the additional UCC Article 9 requirements, even if the security interest is  
35 not otherwise indicated on a certificate of title or in the office files or the office never receives an  
36 application for a certificate of title. *See* Sections 4, 9, 24, and 25. While this is consistent with  
37 Article 9 Section 9-102(a)(10), this [act] requires a definition that directly encompasses these  
38 functions, while Article 9 can simply tie into this [act] by reference. Therefore, receipt by the  
39 office of a security interest statement pursuant to Section 24 creates an application for a  
40 certificate of title under UCC Article 9 Section 9-303 and triggers application of this [act]  
41 pursuant to UCOTA Section 4, even if there is no other record covering the vehicle in the files of  
42 the office. This is subject to safeguards in Section 4(d) to protect against inappropriate filings.

1 Pursuant to Section 11(d), the certificate of title must provide for reassignment of title by  
2 execution of the certificate of title, or a related form, including dealer reassignments and secured  
3 powers of attorney, *e.g.*, by execution of a form that is part of or related to the certificate of title.  
4 *See* the definition of “execute.”  
5

6 Section 3(a)(6) defines what it means to “create” a certificate of title. This definition  
7 relates to other definitions and provisions of this [act]. *See, e.g.*, the definitions of “Electronic  
8 certificate of title” and “Written certificate of title,” Section (3)(a)(10) and (34); Section 10  
9 (obligation of the office to create a certificate of title). As noted, an application for a certificate  
10 of title can be created by receipt in the office of a security interest statement. *See* Sections 4, 24,  
11 and 25. A certificate of title can be created by the office making a file pursuant to Sections 9, 10,  
12 and 11, or by issuance of a written certificate of title pursuant to those sections.  
13

14 “Deliver” as defined at Section 3(a)(7) means a transfer of possession of a record; as used  
15 in this context the meaning and context of the term “transfer” are different from the definition of  
16 “Transfer” at Section 3(a)(31), which refers to conveyance of an interest in a vehicle. Payment  
17 by the transferee for the cost of delivery constitutes “the cost of delivery provided” and meets the  
18 definition of deliver. In the case of an electronic record, deliver means the transmission by  
19 electronic means to the electronic mail address of the recipient.  
20

21 Under Section 3(a)(10), “Electronic certificate of title” designates a certificate of title that  
22 meets all requirements in the definition of a certificate of title and is only in electronic form. *See*  
23 *also* Sections 11 and 14. This definition is modeled somewhat on the UCC Article 9 definition  
24 of “Electronic chattel paper” at Section 9-102(a)(31). The general purpose is to create a parallel  
25 system for electronic certificates of title, somewhat like that for electronic chattel paper in Article  
26 9, while continuing to recognize the traditional primacy of a written certificate of title if one  
27 exists. *See* Sections 16, 18, 19, 21-23; and the definition at Section 3(a)(34).  
28

29 The definition of “execute” at Section 3(a)(11) applies only when used to denote  
30 execution of a certificate of title or certificate of origin.  
31

32 The definition of “lien creditor” at Section 3(a)(14) is taken largely from UCC Article 9  
33 Section 9-102(a)(52), for purposes of consistency with the UCC.  
34

35 The definition of “Manufacturer” at Section 3(a)(15) includes a later-state manufacturer,  
36 *e.g.*, a manufacturer that completes vehicles by installing or modifying a vehicle body on a  
37 chassis manufactured by another manufacturer.  
38

39 The definition of “Owner” at Section 3(a)(17) means a person with ownership of an  
40 interest in the legal title to a vehicle. It does not include an equitable or beneficial ownership  
41 interest.  
42

43 The definition of “Person” at Section 3(a)(19) is taken from UCC Article 1 Section 1-

201(b)(27), for purposes of consistency with the UCC. The list is illustrative, not exclusive. Another example would be the trustee of a statutory trust.

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

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

Two other fundamental purposes are evident in the definitions: (1) Allowing purely electronic certificates of title and origin and related documentation (with a tiered option provided at Sections 9, 10, 11, and 15 to allow certain persons to request a paper certificate); and (2) allowing some transactions relating to written certificates of title to be conducted electronically (*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 transactions that involve written certificates of title.

This [act] contemplates the filing of paper and electronic security interest statements to perfect security interests (Sections 24 and 25), and paper and electronic documentation of other records, including security interest and title searches, without or without a paper certificate of title, based on the discretion, budget, and files of the state certificate of title agency (designated herein the office). *See* Sections 4, 14 and 22-23. The official records of the office are designated “files,” to avoid confusion with the defined term “record.”

Thus, “certificate of title” means any form of “record” meeting the requirements for a certificate of title but does not denote either a written or electronic certificate of title. In addition, receipt by the office of a security interest statement is an application for a CT, pursuant to Sections 4 and 24. An electronic certificate of title is a certificate of title being maintained solely in electronic form; a written certificate of title is one that exists solely in written form. Note that, unless stated otherwise (as in Section 4(a)), “certificate of title” means one created in this state.

The definition of “Sign” at Section 3(a)(27) is derived from the definition of “signed” in UCC Article 1 Section 1-201(b)(37) and the definition of “electronic signature” in the Uniform Electronic Transaction Act (UETA) Section 3(8). It is intended to encompass both electronic and written signatures. The definition of “termination statement” at Section 3(a)(29) relates to the

1 termination of a security interest statement under Section 26. In addition, the debtor can  
2 terminate a security interest statement in limited circumstances under Section 22. *See also*  
3 Sections 24 and 25.

4  
5 “Specialized mobile equipment,” as that term is used in Section 3(a)(33)(A), includes off-  
6 road motorized vehicles whose use of the roadway is only incidental to their off-road purpose,  
7 *i.e.*, mobile equipment not designed primarily for the transportation of individuals or property  
8 upon a road or highway and only incidentally operated or moved over a road or highway,  
9 including: motorized vehicles designed exclusively for off-road use; ditch digging apparatus;  
10 well-boring apparatus; construction equipment; road construction and maintenance machinery  
11 such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors,  
12 ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth-  
13 moving carry-alls and scrapers, power shovels, and drag lines; self-propelled cranes; and earth-  
14 moving equipment. The term does not include a house trailer (which is not a vehicle), or dump  
15 trucks, truck-mounted transit mixers, truck-mounted cranes and shovels, or other mobile  
16 equipment mounted on vehicles designed for transport of individuals or property on a roadway.  
17 Vehicles designed for transport on a roadway are not specialized mobile equipment, and are  
18 therefore vehicles covered by this [act].  
19

20 Although technically not a definition, “Location of debtor” is essentially defined in  
21 Article 9 at Section 9-307. For purposes of this [act], the location of the debtor is determined  
22 under Section 9-307.  
23

#### 24 **SECTION 4. LAW GOVERNING VEHICLES COVERED BY CERTIFICATE** 25 **OF TITLE OR CERTIFICATE OF ORIGIN.**

26 (a) In this section, “certificate of title” includes a certificate of title created or  
27 authorized by a government agency of any jurisdiction which is permitted to create or authorize  
28 the certificate of title.

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

33 (c) For purposes of this section, a vehicle becomes covered by a certificate of title

1 when an application for a certificate of title and the fee are received by the office in accordance  
2 with this [act], or when an application for a certificate of title and the fee are received in another  
3 jurisdiction pursuant to the certificate of title law of that jurisdiction.

4 (d) For purposes of this section and [Uniform Commercial Code Article 9], a  
5 security interest statement that is effective under Section 24 constitutes an application for a  
6 certificate of title if:

7 (1) the debtor is located or has a place of business in this state; and  
8 (2) an existing certificate of title covering the vehicle has not been created  
9 in another state.

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

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

17 (1) if the parties to the certificate have chosen the law of a jurisdiction, the  
18 law of that jurisdiction applies to the certificate of origin, even if this state bears no other relation  
19 to the certificate of origin; and

20 (2) in the absence of an agreement effective under paragraph (1), and  
21 except as provided in subsection (g), the rights and obligations of the parties are determined by  
22 the law that would be selected by application of this state's conflict of laws principles.

(g) An agreement otherwise effective under paragraph (1) is not effective to the extent that application of the law of the jurisdiction designated would be contrary to a fundamental policy of the jurisdiction whose law would govern in the absence of agreement under subsection (f)(1).

(h) In the absence of an agreement as to choice of law, if a vehicle is not covered by a certificate of title or a certificate of origin, the rights and obligations of the parties to the certificate are determined by the choice of law principles of this state.

### **Preliminary Comments**

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

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

As a result of the definitions at Section 3, and the scope and choice of law provisions at Section 4, this [act] would apply to a “vehicle” that is “covered” by a “certificate of title” “created” in this state. It also could apply to a certificate of origin as provided subsections (f) and (g).

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

Receipt by the office of a security interest statement constitutes an application for a certificate of title under subsection (d), and under subsection (c) the vehicle becomes covered by a certificate of title at that time, making the [act] applicable under subsection (b) and (if all other requirements are met) perfecting the security interest under Sections 24 and 25. If the debtor subsequently obtains a certificate of title in another state, this earlier security interest will remain

1 perfected under this [act] and Article 9 Section 9-316(d), subject to Section 9-316(e), even if a  
2 certificate of title was never created in this state. The priority of the security interest would be  
3 determined under Article 9. *See, e.g.*, Sections 9-322, 9-337.  
4

5 Subsections (f) through (h) are derived from revised UCC Article 1 Section 1-301(c)  
6 through (f) (2002 uniform text). They provide a back-up rule to subsections (b) and (c),  
7 applicable if there is no certificate of title (or application for a certificate of title under subsection  
8 (d)) to trigger subsections (b) and (c). Thus, *e.g.*, subsections (f) through (h) provide for general  
9 choice of law rules to apply to certificates of origin, which are not created by a state, prior to  
10 creation of or application for a certificate of title.  
11

12 Some states have enacted nonuniform versions of UCC Article 1 Section 1-301(d), (e)  
13 and (f). Those states will need to amend Section 4(f) through (h) to conform with the state's  
14 nonuniform UCC provisions.  
15

16 **Definitional Cross Reference:**  
17

18 "Certificate of title." Section 3(a)(4).  
19

20 "Security Interest Statement." Section 3(a)(24).  
21

22 **SECTION 5. EXCLUSIONS.** Unless the vehicle is covered by a certificate of title, this  
23 [act] does not apply to a vehicle owned by the United States, the government of a country other  
24 than the United States, an Indian tribe, a state, or a [local government] of a state.  
25

26 **Preliminary Comments**  
27

28 This section is derived from the Uniform Motor Vehicle Certificate of Title and Anti-  
29 Theft Act of 1955 (UMVCT) Section 2. UMVCT Section 2 additionally provides specific  
30 exclusions for construction equipment, farm equipment, golf carts, boat trailers, and the like.  
31 These have been removed from UCOTA Section 5, as redundant in view of the definition of  
32 "vehicle" at Section 3(a)(32).  
33

34 **SECTION 6. VEHICLE IDENTIFICATION NUMBER, MAKE, AND MODEL  
YEAR.**

(a) For each vehicle covered by a certificate of title, the office must record as the

1 vehicle identification number [in the files of the office] the vehicle identification number, if any,  
2 assigned by its chassis manufacturer or importer.

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

6 (c) The model year of a [complete new] vehicle is the model year of chassis  
7 manufacture and must be the only model year indicated in the files of the office that relates to the  
8 vehicle.

### 9 **Preliminary Comments**

10 The standards governing vehicle identification numbers, as reflected on certificates of  
11 origin and certificates of title, are derived from industry and title administrator practices.  
12 Departure from these practices could be a basis for objection by a purchaser or the office under  
13 law other than this [act]. *See, e.g.*, revised Article 1 Section 1-303 (2002 uniform text) (old  
14 Article 1 Section 1-205). A purpose of this [act] is to provide legal principles consistent with  
15 these practices.  
16

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

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

23 (b) For the purpose of obtaining a certificate of title, a buyer may require that the  
24 buyer's transferor execute to the buyer a written certificate of origin.

### 25 **Preliminary Comments**



1 This section allows creation of a certificate of origin by a third party (*e.g.*, a dealer or  
2 importer) upon authorization by the manufacturer or importer. It also requires each transferor to  
3 execute any outstanding certificates of origin to the transferee.  
4

5 *See* Section 4(f) and (g) for the choice of law rules that determine whether this [act]  
6 applies to a certificate of origin.  
7

8 “Later stage manufacturer” is a term sometimes used to describe a purchaser to which  
9 ownership of a vehicle is transferred for further manufacture, including fabrication, assembly, or  
10 other completion. A later stage manufacturer is within the definition of “manufacturer” at  
11 Section 3(a)(15), *e.g.*, as that term is used in Section 7(a).  
12

13 Under this section, if a manufacturer or importer of a new vehicle sells a vehicle to a later  
14 stage manufacturer, the selling manufacturer or importer is required to execute to the later stage  
15 manufacturer any known certificate of origin covering the vehicle or required to be created by  
16 agreement or under other law. If a later stage manufacturer transfers ownership of the vehicle to  
17 another later stage manufacturer or to a dealer, distributor, or other buyer, the seller is similarly  
18 required to execute all known certificates of origin to the buyer.  
19

20 And if a dealer, distributor, or other buyer transfers ownership of a new vehicle after  
21 manufacture by a later stage manufacturer, the seller is again required execute to the next buyer  
22 all known certificates of origin covering the vehicle. Thus, Section 7 accommodates a multiple-  
23 step manufacturing and sales process (*e.g.*, transfers between an initial manufacturer and possibly  
24 multiple subsequent manufacturers, dealers, etc., plus a sale by a dealer to the end-user)  
25 involving certificates of origin.  
26

27 **Definitional Cross Reference:**

28 “Buyer.” Section 3(a)(1).

29 “Create.” Section 3(a)(5).

30 “Delivery.” Section 3(a)(6).

31 “Execute.” Section 3(a)(10).

32 “Sign.” Section 3(a)(25).

33 “Transfer.” Section 3(a)(30).

34 “Transferee.” Section 3(a)(31).  
35

1           **SECTION 8. CANCELLATION OF ELECTRONIC CERTIFICATE.** If a written  
2 certificate of origin is created, any electronic certificate of origin covering the vehicle is canceled  
3 and replaced by the written certificate of origin.

4                                   **Preliminary Comments**

5           *See also* Section 15 (Delivery of Certificate of Title).

6  
7           **SECTION 9. APPLICATION FOR CERTIFICATE OF TITLE.**

8                           (a) Subject to Section 20, an application for a certificate of title must contain:

9                                   (1) the owner's name and physical address and, if different, an address for  
10 receiving communications by United States mail;

11                                   (2) the vehicle identification number as provided in Section 6;

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

14                                   (4) an indication of all security interests in the vehicle which are known to  
15 the applicant;

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

18                                   (6) a signed record disclosing the vehicle's odometer reading, as required  
19 under law other than this [act] to be provided by the transferor when ownership of the vehicle is  
20 transferred;

21                                   (7) if the application is made in connection with a transfer of ownership,  
22 the transferor's and transferee's names, physical addresses and, if different, addresses for

1 receiving communications by United States mail, and the sales price if any, and the date of the  
2 transfer;

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

5 (9) the signature of the owner.

6 (b) An application for a certificate of title may contain electronic communication  
7 addresses of the owner and the transferor.

8 (c) Except as otherwise provided in Section 21 or 22, if an application for a  
9 certificate of title includes a transfer of ownership or a direction to terminate a security interest  
10 statement, the application must be accompanied by all existing certificates of origin and any  
11 certificate of title covering the vehicle, created or authorized in any jurisdiction, which are known  
12 to the applicant, executed to the owner or other transferee by the transferor. Except as otherwise  
13 provided in Section 22, if the application includes a direction to terminate a security interest  
14 statement, the application must be accompanied by a termination statement under Section 26.

15 (d) If an application for a certificate of title does not include a transfer of  
16 ownership or a direction to terminate a security interest statement, except as otherwise provided  
17 in Section 23, the application must be accompanied by all existing certificates of origin and  
18 certificates of title covering the vehicle known to the applicant, created or authorized in any  
19 jurisdiction[, evidencing the applicant as owner of the vehicle].

20 (e) If there is no existing certificate of origin or certificate of title covering the  
21 vehicle known to the applicant, created or authorized in any jurisdiction, an application for a  
22 certificate of title must be accompanied by all existing information or records of the vehicle's

ownership known to the applicant. Information submitted under this subsection is part of the application for the certificate of title and must be indicated in the files of the office.

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

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

(h) A security interest statement is subject to subsection (g), and is an application for a certificate of title under Section 4.

#### **Preliminary Comments**

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

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

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

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

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

1 transfer ownership. *Id.*

2  
3 It is not necessary for this [act] to restate or specifically incorporate these federal law  
4 requirements. However, this general reference to those requirements may be helpful in alerting  
5 interested parties to the federal requirements. That is the purpose of subsection (a)(6).  
6

7 There has been some uncertainty about the impact of the federal requirement that the  
8 disclosures be “in writing,” *see, e.g.*, 49 C.F.R. Section 580.5(c), particularly as regards  
9 electronic certificates of title. This has now been clarified somewhat. The NHTSA has indicated  
10 that an electronic disclosure containing the proper information will satisfy the federal written  
11 disclosure requirement at 49 C.F.R. Section 580.7 for a lessee-to-lessor transfer. This  
12 requirement is similar but not identical to the written disclosure requirement for other transfers,  
13 *e.g.*, at 49 C.F.R. Section 580.5, and therefore provides some indication that an electronic  
14 disclosure satisfies the federal requirement for a “writing.” *See* letter to Edwin E. Huddleson, II,  
15 General Counsel, American Automobile Leasing Association, from Jacqueline Glassman, Chief  
16 Counsel, National Highway Traffic Safety Administration (April 25, 2003). This is consistent  
17 with the federal Electronic Signatures in Global and National Commerce Act (ESIGN), Pub. L.  
18 106-229 (June 30, 2000), codified at 15 U.S.C. § 7001 *et seq.* Further clarification is being  
19 considered.  
20

21 Thus it is possible that transactions involving electronic certificates of title can be  
22 executed entirely by electronic means, including the federal odometer mileage disclosures  
23 required under 49 C.F.R. Part 580.  
24

25 **SECTION 10. CREATION OF AND CANCELLATION OF CERTIFICATE OF**  
26 **TITLE.**

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

30 (b) The office may create a written certificate of title or, if the office authorizes or  
31 creates electronic certificates of title, an electronic certificate of title, at the option of the secured  
32 party of record or, if no security interest is indicated in the files of the office, at the option of any  
33 owner of record. If no request is made by an owner of record or secured party, the office may

1 create a written certificate of title or an electronic certificate of title.

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

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

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

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

8 (d) Rejection of an application affects only the applicant's ownership and does not  
9 alter the receipt or effect of a security interest statement under Section 4, 24, or 25.

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

17 (f) Cancellation of a certificate of title, or rejection of an application for a  
18 certificate of title, does not alter the receipt or effect of a security interest statement under Section  
19 4, 24, or 25 or [Uniform Commercial Code Article 9].

## 20 Preliminary Comments

21 *See also* the standards for delivery of a certificate of title at Section 15. The  
22 determination of the secured party of record, defined at Section 3(a)(24) as the first secured party  
23 indicated in the files of the office, *e.g.*, for purposes of subsection (b), is an administrative matter

1 for purposes of this [act] and is not determinative of priority issues for purposes of UCC Article  
2 9. The effect of a security interest statement is governed by Sections 4, 24, and 25.

3  
4 This section requires the office to create a certificate of title pursuant this [act], upon  
5 submission of an application meeting the requirements of Section 9, 21, 22, or 23. Other  
6 provisions, for example Sections 16-20, provide substantive standards to govern the resolution of  
7 competing claims, *e.g.*, in contract disputes, but these standards are not intended to be addressed  
8 or resolved by the office in the application process. The office should not be liable for violation  
9 of these substantive standards in creating or refusing to create a certificate of title, as long as it  
10 acted in good faith; however, these standards will be applicable in the event that there is judicial  
11 review of a decision of the office to create or refuse to create a certificate of title.

12  
13 References to electronic certificates of title in this [act] are permissive and intended to be  
14 applicable only if the state and office authorize electronic certificates of title. *See, e.g.*,  
15 subsection (b). These provisions may be included in a state enactment even if electronic  
16 certificates are not authorized or contemplated, for possible future use if such authorization later  
17 occurs.

## 18 19 **SECTION 11. CONTENTS OF CERTIFICATE OF TITLE.**

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

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

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

27 (3) all title brands known to the office, including brands previously  
28 indicated on a certificate of title or certificate of origin created in this state or another  
29 jurisdiction; and

30 (4) the information required for an application pursuant to Section 9(a)(1)

1 through (6).

2 (b) The indication of a title brand on the certificate of title may use abbreviations,  
3 but not symbols, and must identify any jurisdiction whose certificate of title indicated the title  
4 brand. If the meaning of the previous title brand is not easily ascertainable or cannot be  
5 accommodated on the certificate of title, the certificate of title may state: “Previously branded in  
6 [the jurisdiction in which the title brand was previously indicated].”

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

10 (d) A certificate of title must contain a form for the owner to sign in executing the  
11 certificate.

## 12 Preliminary Comments

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

19 In common usage, a “title brand” is a notation on the face of a certificate of title that  
20 provides notice to subsequent purchasers of the damage, condition, or prior use of the vehicle.  
21 The 51 U.S. titling jurisdictions use a wide variety of terms or symbols to brand titles. This [act]  
22 does not define the specific types of damage or condition that typically give rise to title branding  
23 requirements under state law. Previous efforts to establish standard definitions for terms such as  
24 “salvage vehicle,” “flood vehicle,” or “rebuilt salvage vehicle” have been contentious.  
25

26 Unless the enacting state uses Section 29, other law of this or another state will determine  
27 if a title brand is required. If a title brand is required, this [act] requires the use of words or  
28 abbreviations rather than symbols to denote the title brand. Once a title brand is required, this  
29 [act] requires that the title brand be indicated on the face of the certificate of title and all  
30 subsequent certificates of title created for the vehicle by the office. Additionally, once a title  
31 brand is required, the title brand of one state must be “carried forward” on a certificate of title



1 subsequently issued by any other state with respect to the vehicle.  
2

3                   **SECTION 12. CERTIFICATE OF TITLE AND CERTIFICATE OF ORIGIN**  
4 **NOT SUBJECT TO JUDICIAL PROCESS.**

5                   (a) A certificate of title or a certificate of origin does not by itself provide a right  
6 or a means to obtain possession of the vehicle covered by the certificate and is not itself subject  
7 to garnishment, attachment, levy, replevin, or other judicial process against property. However,  
8 this [act] does not prohibit enforcement of a security interest in, levy on, or foreclosure of a  
9 statutory or common law lien on, a vehicle, as permitted under law other than this [act]. The  
10 absence of an indication of a statutory or common law lien on a certificate of title does not  
11 invalidate the lien.

12                  (b) This section does not relieve a person of any duty under this [act] or law other  
13 than this [act] or preclude any remedies in personam.

14                                   **Preliminary Comments**

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

24                   **SECTION 13. OTHER INFORMATION.**

25                  (a) The office may accept a submission of information relating to a vehicle for  
26 inclusion in the files of the office, even if the requirements for a certificate of title, an application

1 for a certificate of title, a security interest statement, or a termination statement have not been  
2 met.

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

5 (c) To effectuate the law of this state, the office may require a person to provide  
6 other information relating to a vehicle, as required for payment of taxes or for issuance or  
7 renewal of license tags.

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

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

### 16 Preliminary Comments

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

1 to be used as a substitute for certificates of title.

2  
3 If the vehicle is subject to a lease, the office may require the submission of the lessee's  
4 name and address and the termination date of the lease, and may designate the lessee or the  
5 lessor, or both, as a person to receive information relating to the vehicle or certificate of title.

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

13  
14 Choice of law concerns with respect to registration under old Article 9 Section 9-  
15 103(2)(b) were resolved in revised Article 9 Section 9-303 and do not exist in this [act], *e.g.*  
16 under Section 4. Therefore there are no choice of law implications relating to certificates of title  
17 as a result of registration under this section.  
18

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

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

21 (1) ascertain the vehicle identification number of the vehicle to which the  
22 record applies;

23 (2) create or maintain a file that indicates the vehicle identification number  
24 of the vehicle to which the record applies and the information in the record, including the date  
25 and time the record was delivered to the office;

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

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

29 (b) The office shall maintain files of the information contained in all certificates  
30 of title created under this [act]. Each file must be accessible by the vehicle identification number

1 for the vehicle covered by the certificate and any other indexing method used by the office.

2 (c) Each file maintained under this section must include all indicated security  
3 interests, title brands, and stolen-property reports applicable to the vehicle, and the name and  
4 address of any known secured party or claimant to ownership.

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

7 *Legislative Note:*

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

12 **Preliminary Comments**

13 [Cross-reference other laws -- Drivers Privacy Protection Act]  
14

15 Derived from UMVCT Section 8 and UCC Article 9 Section 9-519. This is a counterpart  
16 to Article 9 Section 9-519(a).  
17

18 The office is required to accept each application for a certificate of title that is submitted  
19 in accordance with Section 9 and, if the files of the office indicate that all security interests have  
20 been terminated, to create a written or electronic certificate of title, at the option of the owner in  
21 accordance with this [act]. See Sections 9-11, 15, and 21-23.  
22

23 This section requires the office to maintain files of the information required for the  
24 purposes of this [act]. Inherent in this obligation is the authority to maintain the files directly, or  
25 to provide for such maintenance by a qualified third party. Section 11 requires that any  
26 certificate of title created by the office must reflect the files of the office as to the information  
27 required pursuant to this [act].  
28

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

30 (a) Upon creation of a certificate of title, the office shall promptly deliver the  
31 certificate of title, if written, or a record evidencing an electronic certificate of title, if electronic,

1 to the secured party of record, if any, at the address shown on the security interest statement  
2 submitted by the secured party of record and, unless previously provided to the owner of record,  
3 shall deliver a record evidencing the certificate of title to that owner at the address indicated in  
4 the files of the office. If no secured party is indicated in the files of the office, the certificate of  
5 title or record evidencing the electronic certificate of title must be delivered to the owner of  
6 record. The secured party of record, if any, may elect to have the office create a written  
7 certificate of title. The owner of record also may make such an election but only if no secured  
8 party is indicated in the files of the office.

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

12 (c) If a written certificate of title is created, any existing electronic certificate of  
13 title covering the vehicle is canceled. The cancellation must be noted in the files of the office  
14 with an indication of the date and time of the cancellation.

15 (d) Any existing written certificate of title must be canceled before an electronic  
16 certificate of title is created. The cancellation must be noted on the face of the written certificate  
17 of title and in the files of the office with an indication of the date and time of the cancellation.

#### 18 **Preliminary Comments**

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

22  
23 The determination by the office of the secured party; as required under this section, is an  
24 administrative determination for purposes of this section and is not dispositive of priority issues  
25 governed by UCC Article 9.

1           This section does not require creation of a written certificate of title, except at the request  
2 of the secured party of record or, in some circumstances, the owner; if a written certificate of title  
3 is created it must be delivered to the secured party of record, if any. This is designed to make the  
4 state a certificate of title “title holding” state when the option to have a written certificate of title  
5 is exercised. However, while “title holding” may be useful for anti-fraud purposes, it also may  
6 create delays for subsequent purchasers who need the certificate of title to perfect a new security  
7 interest or otherwise execute a subsequent transaction. Under the U.S. Supreme Court’s  
8 interpretation of the Bankruptcy Code in *Fidelity Financial Services v. Fink*, 522 U.S. 211  
9 (1998), such delays may be legally fatal. This section allows the owner to request creation of a  
10 written certificate of title to facilitate subsequent transactions, if all security interests have been  
11 terminated. If the vehicle is subject to a perfected security interest, this section does not allow  
12 the owner to require the office to create a written certificate of title. However, this does not  
13 interfere with the owner’s ability to refinance a prior secured credit transaction, as Sections 4, 24,  
14 and 25 allow perfection of a new security interest by filing a security interest statement, without  
15 submission of the certificate of title to the office, if the requirements at Section 4(d) are met.  
16 Thus, in the circumstances provided at Section 4(d), a secured party can refinance a prior loan or  
17 credit sale, perfect a new security interest in a timely manner under the Bankruptcy Code, 11  
18 U.S.C. § 547(c)(1) or (3), without the certificate of title, pay off the prior creditor, and await the  
19 prior creditor’s release of any written certificate of title, without risk of attack under the  
20 Bankruptcy preference rules. This illustrates the importance of allowing subsequent parties to  
21 search for and file security interest statements without otherwise having access to the certificate  
22 of title. *See* Sections 4, and 24-25.

23  
24           Upon a proper request, the office must create and deliver a written certificate of title  
25 within a reasonable period, not to exceed a maximum specified limit to be determined by each  
26 state. Fifteen days is recommended as a customary period[, consistent with the UMVCT].  
27

## 28           **SECTION 16. TRANSFER.**

29           (a) Upon sale of a vehicle located in this state or covered by a certificate of title  
30 created in this state, a person authorized to execute the certificate of title or certificate of origin  
31 covering the vehicle, as promptly as practicable and in compliance with this [act] [and any law  
32 other than this [act]], shall execute the certificate to the buyer. The buyer [of a vehicle located in  
33 this state or covered by a certificate of title created in this state] has a specifically enforceable  
34 right to require the seller to execute the certificate of title or certificate of origin to the buyer.

35           (b) Execution of a certificate of title covering the vehicle created in any

1 jurisdiction satisfies the requirement in subsection (a).

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

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

#### 10 Preliminary Comments

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

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

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

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

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

**SECTION 17. NOTICE OF TRANSFER WITHOUT APPLICATION.** A transferor or transferee of legal title to a vehicle may submit a signed record to the office evidencing the transfer, without filing an application for a certificate of title, in accordance with standards and procedures established by the office. The record may evidence the transfer of legal title between the transferor and transferee but is not effective as to other persons claiming an interest in the vehicle.

## 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. This is intended to supplement Sections 9, 10, 13, 16, and (as relevant) Sections 21-22. 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.

This notice procedure is not a substitute for an application for a certificate of title pursuant to Section 9. A record submitted or file created pursuant to this section is 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 Section 9, or any other documentation required by the office in accordance with Sections 21-22, 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(c) (legal title may pass without certificate of title). The office that receives this information should provide a procedure to



1 identify, expunge, or segregate contested or questionable information in appropriate  
2 circumstances.  
3

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

5 (a) A purchaser of a vehicle acquires all interests that the transferor had or had  
6 power to transfer, except that a purchaser of a limited interest acquires rights only to the extent of  
7 the interest purchased. A person having voidable title to a vehicle has power to transfer a good  
8 title to a good faith purchaser for value. If ownership of a vehicle has been transferred in a  
9 transaction of purchase, the purchaser has the power to transfer good title to a good faith  
10 purchaser for value even though:

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

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

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

16 (4) the transfer in the transaction of purchase was procured through fraud  
17 punishable as larcenous under the criminal law; or

18 (5) a certificate of title was not executed.

19 (b) Entrusting of a vehicle to a merchant that deals in vehicles [or other goods of  
20 that kind] gives the merchant the power to transfer all rights of the entruster to a buyer in  
21 ordinary course of business or, to the extent of the lessee’s interest, to a lessee in ordinary course  
22 of business, even if the certificate of title is not executed to the buyer or lessee. In this  
23 subsection, “entrusting” includes any relinquishment of possession and any acquiescence in

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

4 (c) This section is subject to [Uniform Commercial Code Section 2A-303].

#### 5 **Preliminary Comments**

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

11  
12 Subsection (b) is patterned on UCC Section 2-403(2) and (3), for consistency and to make  
13 clear that the Article 2 "entrustment" rule applies to vehicles, even if the certificate of title is not  
14 executed to the buyer or lessee. "Buyer in ordinary course of business" and "lessee in ordinary  
15 course of business" are defined at Section 3.

16  
17 Sections 18-22 comprise a package that accommodates electronic and informal transfers  
18 while recognizing the primacy of a written certificate of title and protecting good faith purchasers  
19 and buyers in ordinary course of business.  
20

### 21 **SECTION 19. OTHER TRANSFEREES OF VEHICLE COVERED BY** 22 **CERTIFICATE OF TITLE.**

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

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

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

(b) If, during the period 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 business of selling or leasing vehicles of that kind, takes free of the security interest if the buyer:

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

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

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

### **Preliminary Comments**

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

Subsection (b) is patterned on UCC Article 9 Section 9-337, but with important

1 differences: Subsection (b) applies to intrastate sales, while Section 9-337 applies only to  
2 interstate scenarios; unlike Section 9-337, subsection (b) allows a purchaser to take free of a  
3 security interest properly perfected in the same state (though only if it is not indicated on a  
4 written certificate of title executed to the buyer). However, subsection (b) also imposes  
5 requirements on the buyer not found in Section 9-337: Execution of the certificate of title; good  
6 faith; and a lack of notice (compared to only the lack of knowledge required by Section 9-337).  
7 “Notice” is defined at UCC Section 1-202. These requirements assure that only an innocent  
8 purchaser will qualify for the exceptional protection provided by this section.  
9

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

20 Subsection (c) recognizes an exception for a buyer in ordinary course of business  
21 (BIOCB), based on Article 9 Section 9-320. Section 9-320 cuts off security interests created by  
22 the seller. Subsection (c) recognizes and incorporates this Article 9 provision in the context of a  
23 certificate of title transaction, and specifies that a buyer of a vehicle can be a BIOCB even if that  
24 person does not obtain a certificate of title. *See also* UCC Sections 2A-304, 2A-305.  
25

26 The result of subsection (c) is to allow the BIOCB of a vehicle covered by a certificate of  
27 title to take free of claims and security interests created by the seller (*e.g.*, an inventory security  
28 interest created by an auto dealer who sells the vehicle to a BIOCB), even if the secured party  
29 holds the certificate of title; but, like Section 9-320, subsection (c) does not allow the BIOCB to  
30 take free of a security interest created by a consignor to the dealer that sold the vehicle, if the  
31 security interest is perfected under this act, because that is not a security interest created by the  
32 seller, unless the consignor and dealer/consignee are the same or are so closely connected as to be  
33 treated as the same entity. This reflects long-standing UCC policy that even a BIOCB only takes  
34 free of security interests created by his or her seller, not security interests created by other or prior  
35 parties. *But see* Section 18(b) (the entrustment rule) for buyer remedies in a consignment  
36 scenario.  
37

38 Section 19 is consistent with the UCC and most case law. It also resolves a related issue:  
39 Can a buyer of a vehicle from a dealer be a BIOCB without execution of the certificate of title?  
40 The UCC definition of BIOCB is not specific on this, but is broad enough to accommodate this  
41 as a common dealer practice. The cases are split. However, this is a common dealer practice,  
42 and Sections 18(b) and 19(c) protect a consumer buying from a dealer without execution of a  
43 certificate of title. Rights as between the dealer and its secured party or consignor, such as the

1 priorities of claims to the sales proceeds, are left to other law. *See, e.g.*, UCC Article 9 Sections  
2 9-102(a)(64), 9-315, 9-322.

3  
4 The definition at Section 19(e) incorporates revised Uniform Commercial Code (UCC)  
5 Article 1 Section 1-201(b)(9) (2002 uniform text).  
6

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

8 (a) Except as otherwise provided in this section, a certificate of title, certificate of  
9 origin, security interest statement, or other record otherwise satisfying the requirements of this  
10 [act] is effective even if it contains incorrect information or required information is omitted.

11 (b) In addition to any rights provided under Section 18 or 19, if a certificate of  
12 title, certificate of origin, security interest statement, or other record is seriously misleading  
13 because it contains incorrect information or omits required information, a purchaser of the  
14 vehicle covered by the record takes free of any claim or interest [the validity of which is  
15 dependent on the correct information or omitted information,] [which would have been contained  
16 in the record if the correct or omitted information had been provided,] to the extent that the  
17 purchaser gives value in reasonable reliance on the incorrect information or the absence of the  
18 omitted information.

19 (c) Except as otherwise provided in subsection (d) or in Section 24(c), a  
20 description of the vehicle covered by a certificate of title, certificate of origin, security interest  
21 statement, or other record otherwise satisfying the requirements of this [act] is sufficient, and not  
22 seriously misleading, even if the description and vehicle identification number are not specific  
23 and accurate, if the information, including the vehicle identification number, reasonably  
24 identifies the vehicle.

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

### **Preliminary Comments**

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

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

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

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

An error in the vehicle identification number (VIN) will not be seriously misleading in many cases, *e.g.*, where a security interest statement is submitted to the office in conjunction with

1 a correct certificate of title covering the vehicle. The correct VIN will be apparent on the  
2 certificate of title and a minor VIN error on the security interest statement should not prevent the  
3 security interest from being noted on the certificate of title or in the files of the office. Similarly,  
4 an error in typing the VIN on a written certificate of title will normally be minor and harmless,  
5 and will not impair the effectiveness of the certificate of title or its execution. The same is true  
6 for errors in the names of the parties to a transaction. These are examples of harmless errors  
7 under subsections (a), (b), and (c).  
8

9 The exception is described at subsection (d). The exception at subsection (d) is necessary  
10 where the search depends on the files of the office, because in this context an error in the name of  
11 the owner or VIN could result in a record being mis-filed or not discovered in a proper search of  
12 the files of the office, depending on the search logic and indexing system being used.  
13

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

15 (a) In this section:

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

18 (A) on account of death, divorce, merger, consolidation,  
19 dissolution, or bankruptcy;

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

22 (C) through other legal process.

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

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

27 (B) the name and mailing address of the owner of record and the  
28 transferee and any other information required by Section 8(a);

1 (C) documentation sufficient to establish the transferee's interest  
2 or right to acquire the ownership of the owner of record; and

3 (D) a statement:

4 (i) that the certificate of title is an electronic certificate of  
5 title;

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

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

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

14 (1) accept receipt of the transfer-by-law statement;

15 (2) promptly send notice to the owner of record and to all persons  
16 indicated in the files of the office as having a security interest in the vehicle that a transfer-by-law  
17 statement has been received by the office;

18 (3) amend its records to reflect the transfer;

19 (4) cancel the certificate of title created in the name of the owner of record  
20 listed in the transfer-by-law statement, whether or not the certificate has been delivered to the  
21 office;

22 (5) create a new certificate of title pursuant to Section 9, indicating the



transferee as owner of record; and

(6) deliver the new certificate of title pursuant to Section 19.

(c) This section does not affect the rights and obligations of a secured party in the enforcement of a security interest under [Uniform Commercial Code Article 9].

### **Preliminary Comments**

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

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

(a) The office shall create a certificate of title upon receiving an application that includes a transfer of ownership or a direction to terminate a security interest statement but is not accompanied by submission of a signed certificate of title or certificate of origin only if:

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

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

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

1 (4) the applicant presents other documentation required by the office to  
2 evidence the applicant's ownership or right to termination of the security interest statement, and  
3 there is no credible information available to the office indicating theft, fraud, or any undisclosed  
4 or unsatisfied security interest, lien, or other claim to an interest in the vehicle.

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

12 (c) If the office has not received a claim for indemnity within one year after  
13 creation of the certificate of title under subsection (a), the office shall release any required bond,  
14 indemnity, or other security.

15 (d) In lieu of the requirements of subsection (b), the office may include in the  
16 certificate of title created under subsection (a) an indication that the certificate of title was  
17 created without submission of a signed certificate of title or termination statement. If no credible  
18 information indicating theft, fraud, or any undisclosed or unsatisfied security interest, lien, or  
19 other claim to an interest in the vehicle has been received by the office within one year after  
20 creation of the certificate of title, upon a request in a form and manner specified by the office, the  
21 office shall remove the indication from the certificate of title.

## 22 Preliminary Comments

1           Derived from UMVCT Section 11. *See also* UCOTA Sections 18, 19, 21 and 23.  
2       Section 22 may be used, *e.g.*, to request a certificate of title to effectuate a sale, gift, auction or  
3       judicial sale, UCC Article 9 disposition sale, or other transfer where the seller, donor, or other  
4       transferor is unable or unwilling to obtain or execute the certificate of title. Section 22 can also  
5       be used in lieu of a termination statement under Section 26, *e.g.*, if a secured debt has been  
6       satisfied and the secured party is unable or unwilling to provide a termination statement. Section  
7       22 requires a supporting affidavit, 45 days prior notice to all known interested parties, and (at the  
8       option of the office): other documentation (*e.g.*, a bill of sale or sales contract and cancelled  
9       check or other evidence of payment); a bond; and/or a legend on the certificate of title, as  
10      additional potential safeguards to supplement the procedures at Sections 9 and 10.

11  
12           This section is not for use by an owner of record seeking to replace a lost, stolen, or  
13      destroyed certificate of title; that procedure is provided at Section 23. Section 23 is designed to  
14      allow a replacement title to be obtained by the same owner; it does not directly involve a transfer  
15      of ownership. In contrast, Section 22 provides for a transfer of title or termination of perfection  
16      of a security interest where the applicant presents evidence that he or she is entitled to such a  
17      transfer or termination, satisfactory to the office, and the transferor or secured party is unable or  
18      unwilling to deliver the certificate of title as otherwise required. The requirements and remedy  
19      provided by this section are in addition to those set forth elsewhere in this [act], *e.g.*, at Sections  
20      21 and 23.

## 21 22           **SECTION 23. REPLACEMENT CERTIFICATES OF TITLE.**

23           (a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise  
24      becomes unavailable or illegible, the secured party of record or, if there is no secured party  
25      indicated in the files of the office, the owner of record may make application for and obtain a  
26      replacement certificate of title in the name of the owner of record by furnishing information  
27      satisfactory to the office in accordance with this section.

28           (b) An application for a replacement certificate of title must be submitted in a  
29      record signed by the applicant and, except as otherwise permitted by the office, must comply  
30      with Section 8.

31           (c) The existing certificate of title must be submitted to the office with the  
32      application for a replacement certificate of title, unless it has been lost, stolen, destroyed, or is

1 otherwise unavailable.

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

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

#### 6 **Preliminary Comments**

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

#### 14 **SECTION 24. EFFECTIVENESS OF SECURITY INTEREST STATEMENT.**

15 (a) A security interest statement sufficient under subsection (b) is effective upon  
16 receipt by the office and tender of the applicable fee. An effective security interest statement is  
17 an application for a certificate of title for purposes of Section 4 and [Uniform Commercial Code  
18 Article 9 Section 9-303].

19 (b) A security interest statement is sufficient if it includes the name of a debtor,  
20 the name of a secured party or a representative of a secured party, and a description of the  
21 vehicle, and one of the following conditions is met:

22 (1) the debtor has signed a security agreement that provides a description  
23 of the vehicle;

24 (2) the vehicle is in the possession of the secured party pursuant to  
25 [Uniform Commercial Code Section 9-313] or pursuant to the debtor's agreement; or

1 (3) the debtor has otherwise authorized the security interest statement in a  
2 signed record.

3 (c) A security interest statement is not received if the office rejects the statement  
4 under subsection (e). The office may reject a security interest statement only under subsection  
5 (e) and only if:

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

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

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

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

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

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

## 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 within a specified time. 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). If the security interest statement is effective under Section 24, and the security interest has attached under UCC Article 9, the security interest is perfected under Section 25(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 written 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.

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 often will be a harmless error, because it will not affect a search of the files under the vehicle identification number (VIN) or execution of a written certificate of title. Even an error in the VIN 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 form due to an erroneous VIN under subsection (c), the form may be received and effective under subsection (a) if the rejection is not timely under subsection (e). In that case the effect of the erroneous VIN will be determined under Section 20. Thus Section 24 determines the receipt effectiveness of a security interest statement for purposes of perfection under Section 25, while Section 20 determines the effect 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), UCOTA 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 UCOTA rules governing the effectiveness of a security interest

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

8  
9 Subsection (e) provides a procedure to require the office to notify a secured party if a  
10 security interest statement is rejected. The time limit for this notice reflects a balancing of the  
11 need for secured parties to receive prompt notice of the need to take remedial action, with the  
12 need of the office for sufficient time to process incoming security interest statements. If timely  
13 and proper notice of rejection is not sent under subsection (e), a security interest statement  
14 sufficient under subsection (b) is received under subsection (a), even though it may not otherwise  
15 meet the requirements of this [act] and was not recorded or indexed in the files of the office. In  
16 this circumstance, if the other requirements of subsection (a) and Article 9 are met, the security  
17 interest statement will be effective and under Section 25 the security interest will be perfected by  
18 the security interest statement. Of course, if the security interest statement is significantly  
19 defective on its face, *e.g.*, no debtor's name or a completely erroneous description of collateral, it  
20 may not be sufficient under subsection (b), or even if sufficient the error may render it seriously  
21 misleading under Section 20. *See also* Section 18. Priorities between the secured party and  
22 those who may be prejudiced by the failure of the office to file and index the statement, or to  
23 indicate it on the certificate of title, are covered by other sections, *e.g.*, Sections 18-20.  
24

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

26 (a) Except as otherwise provided in subsections (e) and (f), a security interest in a  
27 vehicle may be perfected only by receipt of a security interest statement that is effective under  
28 Section 24. If a security interest statement is effective under Section 24, the security interest  
29 represented by the security interest statement is perfected upon the later to occur of receipt of the  
30 security interest statement or attachment of the security interest pursuant to [Uniform  
31 Commercial Code Section 9-203].

32 (b) The office may create a certificate of title naming as owner a lessor, consignor,  
33 bailor, or secured party and may treat the person as the owner for purposes of carrying out the

1 duties of the office under this [act]. If the interest of a person named as owner is a security  
2 interest, the certificate of title naming the person as owner perfects the security interest but is not  
3 of itself a factor in determining whether the interest is a security interest.

4 (c) The office may reject a security interest statement sufficient under Section  
5 24(b) only for a reason set forth in Section 24(c) and in the manner set forth in Section 24(e).  
6 Rejection for any other reason or in any other manner is ineffective and the security interest  
7 statement is received as of the business day on which the statement was delivered to the office.  
8 A security interest statement that is sufficient under Section 24(b) and is not rejected under  
9 Section 24(c) is received as of the business day on which the statement was delivered to the  
10 office, and if effective under Section 24(a) constitutes perfection under subsection (a), unless it is  
11 rejected pursuant to Section 24(e). A failure of the office to index a security interest statement  
12 correctly or to indicate the security interest on the certificate of title does not affect the receipt or  
13 effectiveness of the security interest statement.

14 (d) A secured party may transfer its rights as secured party under this [act]. An  
15 otherwise valid transfer of a security interest is effective between the parties to the transfer  
16 whether or not it is reflected in the files of the office or indicated on the certificate of title. A  
17 transfer of a security interest vests in the transferee the rights of the secured party under this [act]  
18 and the [Uniform Commercial Code]. Perfection remains effective even if the transfer and the  
19 transferee of the security interest are not indicated in the files of the office or on the certificate of  
20 title. However, a purchaser of the vehicle that obtains a release from a secured party indicated in  
21 the files of the office or on the certificate of title takes free of that security interest and also free  
22 of the rights of a transferee of that security interest if the transfer is not indicated in the files of



1 the office or on the certificate.

2 (e) A security interest created by a person in the business of selling or leasing  
3 vehicles is not subject to this section during any period in which the collateral is inventory held  
4 for sale or lease or is leased by the person.

5 (f) A secured party may perfect a security interest by taking possession of a  
6 vehicle only as provided in [Uniform Commercial Code Section 9-313(b) and 9-316(d)].

### 7 Preliminary Comments

8  
9 Derived from UCC Article 9 Sections 9-310(a), 9-516(a) and (b), 9-517, and 9-520(a),  
10 (b), and (c). One purpose is to establish a system for perfection of security interests by filing a  
11 security interest statement with the office, even if the secured party cannot obtain and submit to  
12 the office the certificate of title. Similarly, perfection does not require indication on a written  
13 certificate of title, although that does confer an additional measure of protection. *See* Sections 14  
14 and 16-19. Perfection occurs upon receipt of a sufficient security interest statement and payment  
15 of the required fee, making the statement effective under Sections 26 and 27, without indication  
16 on a certificate of title, or even if a certificate of title has not otherwise been created. This will  
17 also constitute an application for a certificate of title for purposes of choice of law under Section  
18 4, subject to exceptions in that section. *See* Sections 4, 24, 25. Subsection (a) also makes clear  
19 that perfection under this section is the exclusive means of perfecting a security interest in a  
20 vehicle, except as provided in subsections (e) and (f), which follow UCC Article 9 Sections 9-  
21 311(d) and 9-313(b).

22  
23 Thus, this section is subject to qualifications and exceptions elsewhere in this [act] and  
24 the UCC, *e.g.*, providing for perfection by filing or possession in limited circumstances (Article 9  
25 Sections 9-311(d), 9-313(b)), or requiring attachment as a prerequisite to perfection (Section  
26 25(a), Article 9 Sections 9-203, and 9-308(a)). This [act] is also subject to general rules in the  
27 UCC governing assignments and the rights of third parties, *e.g.*, in Article 9 Part 4, and this is  
28 recognized in subsection (d).

29  
30 Perfection under Sections 24-25, without indication of the security interest on a written  
31 certificate of title, would be effective against lien creditors, but not against a competing party  
32 who relies on the certificate of title, pursuant to Sections 14-19. For example, certain competing  
33 buyers would prevail under Section 18.

34  
35 Subsection (b) recognizes that a secured party, lessor, or bailor may be listed as owner on  
36 the certificate of title. This will be sufficient to perfect the interest of that person, including a  
37 security interest. This reflects current law. *See, e.g., In re Charles*, 323 F.3d 841 (10th Cir.

2003).

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

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

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

## **SECTION 26. TERMINATION STATEMENT.**

(a) A secured party indicated in the files of the office as having a security interest in a vehicle shall deliver to the office a signed termination statement if:

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

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

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

(1) [20] days after there is no obligation secured by the vehicle covered by the security interest statement and no commitment to make an advance, incur an obligation, or

1 otherwise give value secured by the vehicle; or

2 (2) [10] days after the secured party receives a signed demand from the  
3 debtor and there is no obligation secured by the vehicle and no commitment to make an advance,  
4 incur an obligation, or otherwise give value secured by the vehicle.

5 (c) If a written certificate of title has been created and delivered to the secured  
6 party and a termination statement is required under subsection (a), the secured party shall deliver  
7 the written certificate of title to the debtor or the office with the termination statement, within the  
8 time provided in subsection (b). If the written certificate is lost, stolen, mutilated, or destroyed or  
9 is otherwise unavailable or illegible, the secured party shall deliver with the termination  
10 statement, within the time provided in subsection (b), an application for a replacement certificate  
11 of title meeting the requirements of Section 23.

12 (d) Upon the delivery of a termination statement to the office pursuant to this  
13 section, the security interest statement and any notation of the security interest on the certificate  
14 of title to which the termination statement relates becomes ineffective.

15 (e) Only a secured party whose interest is required to be terminated is required to  
16 or may file a termination statement under this [act].

17 (f) A secured party is liable for damages in the amount of any loss caused by not  
18 complying with this section and for the reasonable cost of an application for a certificate of title  
19 under Sections 9 and 22.

20 (g) Upon termination of the effectiveness of a security interest statement under  
21 this section, the office shall reflect in its files the termination of the security interest, and that the  
22 subsequent secured party reflected in the files of the office, if any, is the secured party of record.

If a written certificate of title has been created indicating that the security interest has been terminated, the office shall cancel that certificate of title, create a new certificate of title under Sections 10 and 11, and deliver the new certificate of title in accordance with Section 15.

### Preliminary Comments

“Termination statement” is defined at Section 3(a)(29). The Uniform Security Interest Statement at Section 27 includes a Termination statement.

## SECTION 27. UNIFORM SECURITY INTEREST STATEMENT.

INSTRUCTIONS			
SECURED PARTY: <input type="checkbox"/> Execute one Security Interest Statement for each Vehicle. <input type="checkbox"/> Verify the accuracy of all information on the Security Interest Statement with the Manufacturer's Statement of Origin (on New vehicles) or the Certificate of Title (on previously owned vehicles) <input type="checkbox"/> Submit copies 1 thru 6 (with stub and carbons intact), together with the required fee and title documents, to the office or Motor License Agent. MOTOR LICENSE AGENT: <input type="checkbox"/> Process all copies (1 thru 6). <input type="checkbox"/> Detach Copy 5 for M.L.A. file. <input type="checkbox"/> Send Copy 2 to the office. <input type="checkbox"/> Return copies 1, 3, 4, and 6, together with the appropriate title documents, to the Secured Party.			
DEBTOR NAMES AND ADDRESSES (LAST NAME FIRST)		SECURED PARTY NAME & ADDRESS	OFFICE USE ONLY
			MOTOR LICENSE AGENT USE ONLY
			DATE STATEMENT RECEIVED      TIME RECEIVED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
THIS SECURITY INTEREST STATEMENT COVERS THE FOLLOWING VEHICLE:			RECEIPT NUMBER
DATE OF SECURITY AGREEMENT	CERTIFICATE OF TITLE NO.	VEHICLE IDENTIFICATION NO. (V.I.N.)	MOTOR LICENSE AGENT (IDENTIFICATION/SIGNATURE)
MODEL YEAR	MAKE & MODEL	BODY TYPE	
TERMINATION STATEMENT - FOR SECURED PARTY USE • WHEN SECURITY INTEREST TERMINATED ONLY			ASSIGNEE OF SECURED PARTY & ADDRESS
DATE SECURITY INTEREST TERMINATED _____ AUTHORIZED BY _____ <input type="checkbox"/> TERMINATION STATEMENT MAILED TO OFFICE (DATE) _____ BY <input type="checkbox"/> FIRST CLASS MAIL <input type="checkbox"/> CERTIFIED MAIL <input type="checkbox"/> E-MAIL <input type="checkbox"/> TERMINATION STATEMENT MAILED TO DEBTOR ON _____ BY <input type="checkbox"/> FIRST CLASS MAIL <input type="checkbox"/> CERTIFIED MAIL <input type="checkbox"/> E-MAIL ENCLOSURES <input type="checkbox"/> PAID NOTE <input type="checkbox"/> _____ <input type="checkbox"/> DELIVERED IN PERSON I have completed the above tasks: (SIGN) _____			
ENCLOSURES		SECURED PARTY / ASSIGNEE SIGNATURES	
<input type="checkbox"/> CERTIFICATE OF TITLE <input type="checkbox"/> APPLICATION FOR TITLE <input type="checkbox"/> MANUFACTURER'S STATEMENT OF ORIGIN (M.S.O.) <input type="checkbox"/> FEE		DATE SIGNED  BY _____	
SECURITY INTEREST ENTRY FORM MOTOR VEHICLE [STATE]			

COPY 1: SECURED PARTY MASTER FILE - M.L.A. PROCESSES & RETURNS TO SECURED PARTY      DATABANK 0660

### Preliminary Comments

“Security interest statement” is defined at Section 3(a)(26). Effectiveness of a security

1 interest statement is determined under Section 24. A security interest statement that is effective  
2 under Section 24 may constitute perfection of the security interest under Section 25. Proper use  
3 of this form means that the security interest statement is sufficient under Section 24(b) upon  
4 attachment of the security interest, and therefore is effective under Section 24(a) if received by  
5 the office together with the fee and is not rejected under Section 24(c)-(e).  
6

7 This form can also be used as a termination statement. "Termination statement" is  
8 defined at Section 3(a)(29), and is otherwise governed by Section 26.  
9

## 10 **SECTION 28. DUTIES AND OPERATION OF FILING OFFICE.**

11 (a) The office shall maintain a file of the information provided in a security  
12 interest statement received by the office under Section 24 for a least one year after termination of  
13 the security interest statement under Section 26. The information must be accessible by the  
14 vehicle identification number for the vehicle and any other indexing methods as provided by the  
15 office.

16 (b) If a person that files a record with the office, or submits information that is  
17 accepted by the office, requests an acknowledgment of the filing or submission, the office shall  
18 send to the person an acknowledgment showing the vehicle identification number of the vehicle  
19 to which the record or submission relates, the information in the filed record or submission, and  
20 the date and time the record was received or the submission accepted. A request under this  
21 section must contain the vehicle identification number and be delivered by means authorized by  
22 the office.

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

25 (1) whether there is on file on a date and time specified by the office, but  
26 not a date earlier than three business days before the office received the request, any certificate of

1 title and security interest statement that:

2 (A) covers a vehicle identified by a vehicle identification number  
3 designated in the request; and

4 (B) has not been canceled or terminated;

5 (2) the effective date of the security interest statement; and

6 (3) the name of the owner of record and all security interest statements  
7 indicated in the files of the office that are not subject to a termination statement under Section 26.

8 (d) In responding to a request under this section, the office may communicate the  
9 requested information in any medium. However, if requested, the office shall send the requested  
10 information in a record that is admissible in evidence in the courts of this state without extrinsic  
11 evidence of its authenticity.

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

#### 16 Preliminary Comments

17 Section 28 is derived from UCC Article 9 Sections 522-523.  
18  
19

#### 20 [SECTION 29. TITLE BRAND.]

#### 21 Preliminary Comments

22 [Left blank to allow a state to insert its title brand statute. See also definition of “title  
23 brand” in Section 3, and Sections 9, 10, and 11.]  
24  
25

1           **SECTION 30. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
2     applying and construing this Uniform Act, consideration must be given to the need to promote  
3     uniformity of the law with respect to its subject matter among states that enact it.

4           **SECTION 31. SAVINGS CLAUSE.**

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

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

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

15          **SECTION 32. EFFECTIVE DATE.** This [act] takes effect ....

16          **SECTION 33. REPEALS.** The following acts and parts of acts are repealed:

17          **SECTION 34. TRANSITIONAL PROVISION.**

18          (a) A security interest that is enforceable immediately before this [act] takes effect  
19    and would have priority over the rights of a person that becomes a lien creditor at that time is a  
20    perfected security interest under this [act] if, when this [act] takes effect, the requirements for  
21    enforceability and perfection under this [act] are satisfied without further action.

22          (b) If, immediately before this [act] takes effect, a security interest is enforceable

1 and would have priority over the rights of a person that becomes a lien creditor at that time, but  
2 the requirements for enforceability or perfection under this [act] are not satisfied when this [act]  
3 takes effect, the security interest:

4 (1) is a perfected security interest for one year after this [act] takes effect;

5 (2) remains enforceable thereafter only if the security interest becomes  
6 enforceable under this [act] before the year expires; and

7 (3) remains perfected after the year expires only if the requirements for  
8 perfection under this [act] are satisfied before the year expires.

9 **Preliminary Comment**

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