

DRAFT
FOR DISCUSSION ONLY

UNIFORM CERTIFICATE OF TITLE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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With Reporter's Notes

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ON UNIFORM STATE LAWS

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UNIFORM CERTIFICATE OF TITLE ACT

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UNIFORM CERTIFICATE OF TITLE ACT

PART 1

GENERAL PROVISIONS

SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

SECTION 1-101. SHORT TITLE.

This Act may be cited as the Certificate of Title Act.

SECTION 1-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(a) In this Act:

(1) “Certificate of title” means a written certificate of title with respect to which a statute provides for a security interest to be indicated on the certificate as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the collateral, and which certificate is proof of legal ownership of the goods covered by the certificate of title.

Reporter’s Note

The last phrase of this definition is similar to state CT laws, such as 47 Okla. State. § 1102.2. It recognizes the CT as “proof” of ownership.

The remainder of the definition is drawn from UCC Article 9 § 9-102(a)(10), with a few minor changes. The most important of these changes is insertion in the definition of the word “written,” to specify that the term “certificate of title” means a written CT. *Compare* the definition of “Electronic Certificate of Title,” below.

The above definition thus requires a CT to have four basic elements: (1) a written certificate, (2) issued pursuant to a statute, (3) evidencing title to goods, and (4) providing for notation of security interests. *See also* the specific requirements for a CT issued pursuant to this Act, at § 2-106.

(2) “Electronic certificate of title” means a certificate of title evidenced only by a record or records consisting of information stored in an electronic medium.

Reporter’s Note

This contemplates a certificate of title that meets all requirements in the definition of a CT except that it is in electronic rather than paper form. *See* § 2-401. This definition is modeled on the UCC Article 9 definition of “Electronic chattel paper” at § 9-102(a)(31). The general purpose is to create a parallel system for electronic certificates of title, somewhat like that for electronic chattel paper in Article 9 (recognizing that many of the specific issues are very different), while continuing to recognize the traditional primacy of paper CTs. *See, e.g., infra* §§ 2-201(c), 2-203, 2-206, 2-402, and 3-103.

(3) “Record” means [define the same as or by reference to the UETA and Article 9.]

(4) “Record Certificate” means record of a certificate of title or an electronic certificate of title.

(5) “Vehicle” means any type of device in, upon, or by which a person or property may be lawfully transported on a road or highway. “Vehicle” does not include unmotorized bicycles or the like, but does include motorcycles and motor scooters. “Vehicle” includes trailers, including commercial, recreational, and travel trailers, but does not include manufactured homes or manufactured housing.

Reporter’s Note

Two distinct purposes coalesce in these definitions: (1) The intention to allow purely electronic CTs, lien entries, etc. (with an option to allow the owner to request a paper CT); and (2) an additional intention to allow some transactions relating to paper CTs to be conducted electronically (*e.g.*, assigning certificates of origin and filing lien entry forms). Thus the concept of an electronic “record” has significance beyond electronic CTs.

In addition, this draft contemplates the filing of written and electronic lien entry forms and the conduct of lien and title searches without any CT, based on the files of the state CT agency (designated herein the “appropriate office”). The relevant records of this agency are designated “files,” to avoid confusion with the defined term “record.”

For example, at several points this draft refers to a “record certificate,” thereby referencing any form of “record” constituting a CT but not necessarily meaning an electronic CT. An electronic CT, in contrast, indicates a CT being maintained solely in electronic form. Thus, “record certificate” is a broad term that could indicate either an electronic or paper CT, but does not refer to the general files of the state CT agency.

SUBPART 2. APPLICABILITY OF ACT

SECTION 1-201. LAW GOVERNING VEHICLES COVERED BY A CERTIFICATE OF TITLE.

(a) Applicability of Act. This Act applies to vehicles covered by a record certificate, even if there is no other relationship between the jurisdiction under whose certificate the vehicle is covered and the vehicle or the debtor.

(b) When Vehicles Covered by Certificate of Title. A vehicle becomes covered by a record certificate when a valid application for the record certificate and the applicable fee are delivered to the appropriate authority. A vehicle ceases to be covered by a record certificate at the earlier of the time the record certificate ceases to be effective under the law of the issuing jurisdiction or the time the goods becomes covered subsequently by a record certificate issued by another jurisdiction.

(c) Applicable Law. The local law of the jurisdiction under whose record certificate the goods are covered governs all issues relating to or derived from the record certificate, including all issues governed by this Act.

Reporter’s Note

This section is derived from UCC § 9-303. A primary purpose of this draft is to conform to and avoid conflicts with the UCC, especially Article 9. However, this section uses the term “record certificate” to denote coverage of certificates of title and electronic certificates of title.

The Article 9 language also has been revised to apply only to “vehicles” (as defined at COTA § 1-102) rather than applying to “goods” as in Article 9 § 9-303. This reflects an intention to limit COTA to vehicles.

As a result of the definition at § 1-102, and the scope provision at § 1-201, COTA would apply only to a “vehicle” that is “covered” by a “record certificate.”

SECTION 1-202. EXCLUSIONS.

(a) This act does not apply to:

(1) A vehicle owned by the United States unless it is covered by a record of certificate of title under this Act.

(2) A vehicle moved solely by animal power.

(3) An implement of husbandry.

(4) A self-propelled or motorized wheel chair or similar motorized device for invalid use.

(5) Special mobile equipment designed primarily for off-road use, which derives no revenue from transportation of persons or property and whose use of roadways is only incidental.

Reporter’s Note

Derived from the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955 (UMVCT) § 2.

SUBPART 3. ADMINISTRATIVE AND PROCEDURAL PROVISIONS

PART 2

TITLE AND TITLE TRANSFERS

SUBPART 1. INITIAL REGISTRATION

SECTION 2-101. VEHICLE REGISTRATION NUMBER.

The manufacturer of a vehicle shall assign an exclusive identification number (VIN) to each vehicle it manufactures. This number shall be the only VIN number for that vehicle, and shall be recognized and recorded as such by the [appropriate office].

Reporter's Note

The standards governing VINs, and issuance of certificates of origin and certificates of title, are derived from industry and title administrator practices. A purpose of this draft is to provide legal principles consistent with the broad parameters of such practices.

SECTION 2-102. CERTIFICATE OF ORIGIN.

The manufacturer of a vehicle shall issue or authorize the issuance of a record in the form of a written certificate of origin or an electronic certificate of origin for each vehicle it manufactures. Transfer of ownership of the vehicle shall be made by assignment of this record to the transferee. The record shall include a description of the vehicle, the VIN, and the names of the manufacturer and transferee.

Reporter's Note

Definitions relating to certificates of origin will also be needed, reflecting standard practices. This draft contemplates electronic as well as written certificates of origin. *See also* COTA § 2-401. This provision also contemplates issuance of such records by a third party (*e.g.*, a dealer) upon authorization by the manufacturer.

SECTION 2-103. INCOMPLETE VEHICLES.

(a) If an incomplete vehicle is transferred by its initial manufacturer to a transferee that is to conduct minor finishing operations (a final stage manufacturer), the manufacturer shall assign to the transferee a record of the certificate of origin for the incomplete vehicle.

(b) If the final stage manufacturer conducts minor finishing operations and transfers the completed vehicle to a dealer, distributor, or other purchaser, the final stage manufacturer shall assign a record of the initial manufacturer's certificate of origin to the dealer, distributor, or other purchaser, along with a record of the certificate of origin issued by the final stage manufacturer.

(c) If a dealer, distributor or other seller transfers a vehicle completed pursuant to this section to a purchaser, the dealer, distributor or other seller shall assign to the purchaser the records of all certificates of origin covering the vehicle.

(d) A purchaser or other transferee to whom a record of a certificate of origin is being transferred under this section may require that such record be in the form of a signed writing.

(e) To obtain a record of a certificate of title in this state for a vehicle that has not been previously covered by a record of a certificate of title issued in this or any other state, the records of all certificates of origin, reflecting assignment to the purchaser, shall be submitted to the [appropriate office] pursuant to Section 2-104.

SECTION 2-104. APPLICATION FOR A CERTIFICATE OF TITLE.

(a) The application for a record certificate shall be made to the [appropriate office] and shall contain:

(1) the name and address of the owner (including both a physical and mailing address if those are different);

(2) a description of the vehicle, including (as applicable) make, model, model year, VIN, and body type;

(3) the name and address of the seller (including both a physical and mailing address if those are different); and

(4) the date of purchase.

(b) The application shall be accompanied by a record of any outstanding record of certificate, or other record of a certificate of title or certificates of origin, assigned to the owner.

(c) For purposes of receiving communications that may be required under this act, the application may include a party's email address in addition to the mailing address.

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

SECTION 2-105. ISSUANCE OR REFUSAL TO ISSUE A RECORD CERTIFICATE.

(a) Upon submission of an application meeting the requirements of Section 2-104, and all applicable fees, the [appropriate office] shall (at the option of the applicant) issue a certificate of title or establish a record in the form of an electronic certificate of title reflecting the assignee as owner of the subject vehicle, together with any lien properly perfected under the terms of this Act.

(b) The [appropriate office] shall not refuse to issue a certificate of title to or establish a record of an electronic certificate of title except for a failure to meet the requirements of this Act.

(c) The [appropriate office] may revoke a certificate of title or electronic certificate of title only for a failure to meet the requirements of this Act, and only upon 30 days prior notice served in person or by registered mail with return receipt delivered to the owner.

Reporter's Note

Sections 2-101 - 2-104 are derived from 47 Okla. Stat. §§ 1105.2 - 1106. The references to a "record," "record certificate," and to "electronic certificates of title" are new.

SECTION 2-106. CONTENTS OF RECORD CERTIFICATE.

(a) Each certificate of title or electronic certificate of title issued or established by the [appropriate office] shall include:

- (1) the date issued;
- (2) the name of the owner;
- (3) the names of all lien holders who have complied with the provisions of this Act, in the order of priority according to the order of perfection pursuant to Part Three of this Act;
- (4) the VIN;
- (5) a description of the vehicle including, as applicable: make; model and model year; body type; and date of first retail sale; and
- (6) mileage at time of title transfer (if applicable).

(b) If the vehicle was last registered in a jurisdiction that does not provide for notation of liens on a record certificate, the certificate of title or electronic certificate of title issued or established in this state shall bear a conspicuous legend noting that: "This vehicle may be subject to an undisclosed lien." If no valid notice of such a lien or security interest is received by the [appropriate office] within one year from the issuance or record of a certificate of title or

electronic certificate of title, upon application of the owner and submission of any outstanding certificate of title, the [appropriate office] shall reissue or record (at the option of the applicant) a certificate of title or electronic certificate of title that does not include this legend.

(c) The certificate of title or electronic certificate of title shall provide forms for [three] subsequent assignments and corresponding applications for new certificates of title or electronic certificate of title by the assignees.

(d) A certificate of title or electronic certificate of title is not subject to garnishment, attachment, execution or other judicial process; however, this Act does not prevent a lawful repossession of or levy upon the goods covered by the certificate of title or electronic certificate of title.

(e) A certificate of title or electronic certificate of title may be issued or recorded with the name of the lien holder or secured party as owner; the effect is to perfect a security interest in the vehicle.

Reporter's Note

This section is derived from § 9 of the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act of 1955 (UMVCT). Subsection (e) is new. *See also* Part 3 (Secured Transactions).

SUBPART 2. SUBSEQUENT SALE OR TRANSFER OF OWNERSHIP

SECTION 2-201. TRANSFER OF TITLE.

(a) In the event of the sale or transfer of ownership of a vehicle for which a certificate of title has been issued or an electronic certificate of title has been recorded pursuant to this Act, the seller shall assign such certificate of title or electronic certificate of title to the transferee, by indorsement of the certificate of title or by assignment of the electronic certificate of title in

accordance with the procedures of the [appropriate office], and delivery of the certificate of title or communication of a record of the assignment of the electronic certificate of title to the purchaser or other transferee.

(b) A transfer of title may be effective between the parties to that transfer, and their assignees, without delivery or indorsement of the certificate of title or assignment of the electronic certificate of title as provided in subsection (a), but such a transfer is not effective as to other parties until the transfer meets the requirements of subsection (a).

(c) A purchaser of a vehicle covered by a record certificate takes free of any adverse claim or interest not noted on the record, if the purchaser gives value and receives delivery of the vehicle after issuance of the record and without knowledge of the adverse claim or interest.

(d) A purchaser of a vehicle covered by a certificate of title takes free of any adverse claim or interest not noted on the certificate of title, even if the adverse claim or interest is included in an electronic certificate of title covering the vehicle, if the purchaser gives value and receives delivery of the vehicle after issuance of the certificate of title without knowledge of the adverse claim or interest.

Reporter's Note

Subsection (a) is derived from 47 Okla. Stat. § 1107.A. and is intended to provide a simple baseline rule for transfers of CT vehicles. Subsection (b) is new and is intended to clarify that CT vehicles may be transferred without the CT, but such transfers are invalid as to third parties. Subsection (c) is derived from UCC Article 9 § 9-337, and is intended to protect purchasers who rely on the certificate of title as well as to conform title issues to the rules for security interests in Article 9. *See also infra* §§ 2-203, 2-206, 2-402, and 3-103.

Together these rules comprise a package that accommodates electronic and informal transfers while recognizing the primacy of the certificate of title. An electronic transfer under subsection (a) would have priority over an informal transfer under subsection (b), while an indorsement of the CT under subsection (c) would have priority over both.

SECTION 2-202. NOTIFICATION TO THE [APPROPRIATE OFFICE].

(a) Upon a sale or transfer of a vehicle pursuant to Section 2-201, the seller or transferor may notify the [appropriate office] of the sale or transfer by communicating an authenticated record in accordance with procedures established by that office. Such communication shall include the name and address of the seller, the name and address of the buyer, a description of the vehicle sold including (if applicable) the VIN, and authentication by the seller. Upon receipt of such notification, the [appropriate office] shall file and index a record of the sale or transfer.

(b) Within [30] days of a sale or transfer pursuant to Section 2-201, the purchaser or transferee of the vehicle (unless such person is a dealer licensed by this state or a charitable organization) shall submit to the [appropriate office] the indorsed certificate of title or other record evidencing such sale, transfer, or assignment, together with any documentation required by the [appropriate office] and any insurance verification required by other law, accompanied by the required fee and any tax required by other laws.

(c) Within [30] days of receiving an indorsed certificate of title, or an assignment of an electronic certificate of title, an authenticated record of such, in accordance with Section 2-303 and the required procedures of the [appropriate office], including submission of the required fee and tax, the [appropriate office] shall issue, at the election of the assignee, a new certificate of title or electronic certificate of title, reflecting the assignee as owner.

(d) A licensed dealer or charitable organization may retain the assigned certificate of title or electronic certificate of title in the name of the seller pending resale or other subsequent transfer, [for a period not to exceed _____,] and upon resale or other subsequent transfer shall assign to the purchaser or other transferee the certificate of title or electronic certificate of

title. The purchaser or other transferee shall submit the assignment of the certificate of title or electronic certificate of title to the [appropriate office] in accordance with subsection (b).

Reporter's Note

Derived from 47 Okla. Stat. § 1107. Provides a basic legal framework for submitting title transfers to the appropriate state office. Query: Should the required documentation be further specified in the statute? *See infra* § 2-303.

SECTION 2-203. PURCHASER OF VEHICLE COVERED BY A CERTIFICATE OF TITLE.

(a) Certificate of Title as Evidence of Title. Except as otherwise provided in subsection (b), a purchaser, lessee, or other transferee for value of a vehicle covered by a certificate of title or electronic certificate of title, who takes possession of the vehicle but does not obtain a valid indorsement of the certificate of title or an assignment of the electronic certificate of title covering the vehicle, takes subject to rights based on the certificate of title or electronic certificate of title.

(b) Buyer in Ordinary Course of Business. A buyer in ordinary course of business or a lessee in ordinary course of business who takes possession of the vehicle takes free and clear of any rights based on the certificate of title or electronic certificate of title and asserted by the seller or a party who entrusted the goods to the seller.

Reporter's Note

Subsection (a) states the basic common law rule of assignment, which also runs throughout the UCC: the transferee takes the rights of the transferor. *See also* § 2-201(b). Subsection (a) also reflects the Article 9 rule that rights under the certificate of title are paramount. *See e.g.*, Article 9 §§ 9-335, 9-337. This represents the base line rule, with subsection (b) the exception. *See also* §§ 2-201(c) and (d), 2-206, and 3-103.

Subsection (b) recognizes an exception for a Buyer in Ordinary Course of Business (BIOCB), based on old Article 2 § 2-403 (the Article 2 entrustment rule) and Article 9 § 9-320. Section 9-320 is limited to cutting off security interests, but § 2-403 also cuts off ownership interests of an entrustor. This draft recognizes and incorporates the combined effect of these UCC provisions.

The result is to allow the BIOCB of CT goods to take free of security interests created by the seller (*e.g.*, an auto dealer) *and* ownership claims of the entrusting owner (*e.g.*, a consignor) even if the secured party or owner holds the CT; but it does not allow the BIOCB to take free of a security interest created by the consignor and perfected by CT lien entry, because the consignor did not both create the security interest and sell the goods, unless the consignor and dealer/consignee are the same or are so closely connected as to be treated as the same entity. This reflects long-standing UCC policy that even a BIOCB only takes free of security interests created by his or her seller and ownership claims of an entrustor to his seller, not those of other or prior parties.

Thus, as far as it goes, this is consistent with the UCC and the better case law. However, it does not address a foundational issue: Can a buyer of a vehicle from a dealer (perhaps a dealer-consignee) be a BIOCB without taking an indorsement or assignment of the CT? The UCC Article 1 definition of BIOCB is not specific on this, though it is broad enough to accommodate such a dealer practice. The cases are split. Perhaps a comment is appropriate to indicate that this is a common dealer practice, so as to protect a consumer buying from a consignee.

SECTION 2-204. EFFECT OF ERRORS OR OMISSIONS: CERTIFICATES OF TITLE.

(a) Minor Errors and Omissions. a certificate of title, record, lien, lien entry, or lien entry form substantially satisfying the requirements of this Act is effective even if it contains minor errors or omissions, unless the errors or omissions make it seriously misleading.

(b) A description of the vehicle covered by a certificate of title, and VIN, record, lien, lien entry, or lien entry form is sufficient, whether or not the description and VIN are specific and accurate, if it reasonably identifies what is described.

(c) Except as otherwise provided in subsection (d), and (e), a certificate of title, lien entry or lien entry form that fails to accurately identify the name of the owner, the name of the secured party, or the description of the collateral is not seriously misleading.

(d) If a certificate of title, record, lien, lien entry, or lien entry form contains information which is seriously misleading at the time it is created, a purchaser of the vehicle takes free of any competing claim or interest to the extent that, in reasonable reliance upon the seriously misleading information, the purchaser gives value and receives delivery of the vehicle.

Reporter's Note

This section is modeled on UCC Article 9 §§ 9-338 and 9-506. The purpose is to prevent minor, harmless errors from invalidating a transaction, and to make clear that erroneous debtors' or secured parties' names or description of the goods normally do not mislead third parties in a CT transaction. This issue is different than under Article 9, where an error in the debtor's name can mislead records searches. Thus, no equivalent to Article 9 § 9-506(c) is needed in a CT transaction.

Section (b) is modeled on UCC Article 9 § 9-108, and is intended to make clear that minor errors in the description of the vehicle covered by the CT, *e.g.*, an error in the VIN, are not fatal to the transaction or CT.

SECTION 2-205. EFFECT OF ERRORS AND OMISSIONS: ELECTRONIC CERTIFICATES OF TITLE.

(a) Minor Errors and Omissions. An electronic certificate of title, record, lien, lien entry, or lien entry form substantially satisfying the requirements of this Act is effective even if it contains minor errors or omissions, unless the errors or omissions make it seriously misleading.

(b) Sufficiency of description. Except as otherwise provided in subsections (d) and (e), a description of the vehicle covered by an electronic certificate of title, record, lien, lien entry or lien entry form is sufficient, whether or not the description and VIN are specific and accurate, if it reasonably identifies what is described.

(c) Not seriously misleading. Except as otherwise provided in subsections (d) and (e), an electronic certificate of title, record, lien, lien entry, or lien entry form that fails to accurately identify the name of the owner, the name of the secured party, or the description of the collateral is not seriously misleading.

(d) Effect of seriously misleading information. If an electronic certificate of title, record, lien, lien, lien entry, or lien entry form contains information which is seriously misleading, at the time it is created, a purchaser of the vehicle takes free of any competing claim or interest to the extent that, in reliance on the seriously misleading information, the purchaser gives value and receives delivery of the vehicle.

(e) Information that is seriously misleading. If a search of the records of the [appropriate office] using required correct information, using the [appropriate office's] standard search logic, if any, would disclose an electronic certificate of title, record, lien, lien entry, or lien entry form that fails accurately to provide the name of the owner or the VIN or the vehicle, the failure to accurately provide such information is not seriously misleading.

Reporter's Note

This section provides rules for electronic certificates of title, equivalent to the rules for CTs at COTA § 2-204, with the addition of subsection (e). Subsection (e) is modeled on Article 9 § 9-506(c), and is necessary in this context because an error in the name of the owner or VIN could result in a record being mis-filed or not discovered in a proper search of the files of the appropriate office.

SECTION 2-206. DELIVERY OF CERTIFICATE OF TITLE.

Upon issuance of a certificate of title, or an electronic certificate of title, the [appropriate office] shall send the certificate of title or communicate a record of the electronic certificate of

title, or other evidence of a record certificate, as applicable, to the first lienholder or secured party at the address shown on the lien entry form submitted by that lienholder or secured party and, to the owner at the address shown in the application. The lienholder or owner may elect to have the [appropriate office] issue a certificate of title rather than communicating a record of an electronic certificate of title. If the vehicle is subject to a record of a lien or security interest, any certificate of title issued by the [appropriate office] shall be delivered to the lien holder/secured party.

Reporter's Note

Derived from UMVCT § 10. Note that COTA § 2-204 (Application for a Certificate of Title) and § 3-103 (regarding lien entry forms) provide for optional use of an email address.

This section is designed to make the state a CT “title holding” state, at the option of the lien holder. However, while this may be useful for anti-fraud purposes, it also may create delays for subsequent purchasers or creditors who need the CT to perfect a new lien in a subsequent transaction. Under the U.S. Supreme Court’s rationale in the *Fink* case, such delays may be legally fatal. *See infra* § 3-102. Therefore this provision should be pared with a means to allow subsequent parties to search for and record security interests without having access to the CT. *See* COTA §§ 2-201(c), 2-203, and 3-103.

SECTION 2-207. TRANSFER OF RECORD OR TITLE BY OPERATION OF LAW.

(a) Transfer Statement. In this section, “transfer statement” means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) Effect of Transfer Statement. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer Not a Disposition; No Relief of Secured Party's Duties. A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

Reporter's Note

This is repeated verbatim from Article 9 § 9-619. The purpose is to specify that title transfers may be effectuated to facilitate Article 9 disposition sales, but that such transfers do not displace the Article 9 disposition requirements. An official comment similar to that for § 9-619 also would be appropriate. There is an equivalent rule in the UMVCT at § 16, but it is preferable to utilize the Article 9 language in order to avoid conflicts.

SUBPART 3. LOST, STOLEN OR MUTILATED CERTIFICATES

SECTION 2-301. EXAMINATION OF FILES.

Upon application for a record certificate, the [appropriate office] shall cross-check the VIN against its files of information as required to be maintained by Section 2-302 and Section 3-105, to assure that any new record certificate reflects the information contained in those files. If the examination of these files indicates a lien, security interest, or salvage title, this will be noted on the record certificate and included in the files of such.

Reporter's Note

This is derived from UMVCT § 7.

SECTION 2-302. [APPROPRIATE OFFICE] RECORDS.

(a) The [appropriate office] shall accept each application for a record certificate that is submitted in accordance with Section 2-104, and shall (at the option of the owner or lienholder) issue a certificate of title or record an electronic certificate of title in accordance with the provisions of this Act.

(b) The [appropriate office] shall maintain files of the information contained in all record certificates, and all applications for such, and shall index each file by:

(1) the unique identification number for the vehicle covered by the certificate of title (*e.g.*, the VIN); and

(2) alphabetically, by name of the owner.

(c) Each such file shall also include any liens, security interests, salvage title, or stolen property reports applicable to such vehicle, including the name and address of any lienor, secured party, or ownership claimant.

(d) The information required in this section shall be a public record accessible pursuant to Section 3-105.

Reporter's Note

Derived from VMVCT § 8. Companion to COTA § 2-301.

SECTION 2-303. REGISTRATION WITHOUT CERTIFICATE OF TITLE.

(a) The [appropriate office] shall issue a certificate of title or establish an electronic certificate of title upon an application that is not accompanied by submission of an indorsed certificate of title or assigned record certificate or certificate of origin, if:

(1) all other requirements of an application under Section 2-104 or Section 2-207 are met;

(2) an examination of [appropriate office] files pursuant to Section 2-301 indicates that all parties with an interest in the vehicle have joined in the application; and

(3) the applicant presents such other documentation as the [appropriate office] may deem necessary to evidence the applicant's ownership and establish that there are no undisclosed liens or security interests.

(b) In the case of an application under subsection (a), the [appropriate office] may require the applicant to post a bond or provide an equivalent source of indemnity, equal to no more than twice the value of the vehicle as determined by the [appropriate office], in a form prescribed by

the [appropriate office], which provides for indemnity of any prior owner, lienor, secured party, or other valid claimant, or any subsequent purchaser, lienor, secured party, or valid claimant, for any expense, loss, delay, or damage, including reasonable attorney's fees, resulting from the application being made under subsection (a) or any resulting issuance of a certificate of title or electronic certificate of title or record of such.

A bond or other indemnity required under this section shall be returned to the applicant if no claim thereunder has been received by the [appropriate office] within three years after the date the bond or indemnity is posted with the [appropriate office].

Reporter's Note

Derived from UMVCT § 11. *See also supra* COTA § 2-202.

SECTION 2-304. LOST, STOLEN OR DESTROYED CERTIFICATES OF TITLE; DUPLICATE TITLES.

(a) IF a certificate of title is lost, stolen, mutilated, destroyed or otherwise becomes unavailable or illegible, any lienholder, secured party, or owner, as shown in the files of the [appropriate office], may make application for and obtain a duplicate certificate of title upon furnishing information satisfactory to the [appropriate office].

(b) The application for a duplicate certificate of title must be authenticated by all owners, lienholders, secured parties, and other interest owners or claimants reflected in the files of the [appropriate office].

(c) Before issuing a duplicate certificate of title the [appropriate office] shall send 15 days prior notice of the application to all owners, lienholders, secured parties, and other interest owners or claimants as reflected in the files of the [appropriate office].

(d) If any person who is entitled to receive notice under subsection (c) sends an objection to the [appropriate office] within 15 days after such notice is sent, the [appropriate office] shall not issue a duplicate certificate of title unless and until the objecting party consents in an authenticated record.

(e) All duplicate certificates of title issued by the [appropriate office] shall bear a conspicuous legend stating that: “This is a duplicate certificate of title and may be subject to the rights of a person under the original certificate.”

(f) If the person receiving a duplicate certificate of title subsequently obtains possession of the original certificate of title, the duplicate certificate of title shall be promptly surrendered to the [appropriate office] for cancellation.

Reporter’s Note

Derived from UMVCT § 13.

SUBPART 4. ELECTRONIC RECORDS

SECTION 2-401. ELECTRONIC CERTIFICATE OF ORIGIN OR CERTIFICATE OF TITLE; REQUEST FOR ISSUANCE OF CERTIFICATE.

(a) A certificate of origin or certificate of title may be issued and maintained solely as an electronic record, subject to the provisions of this Act and the [state] Uniform Electronic

Transactions Act. Such a record shall be known as an electronic certificate of title or an electronic certificate of origin.

(b) An electronic certificate of origin or an electronic certificate of title shall be maintained solely as an electronic record in the files of the [appropriate office], unless the owner communicates an authenticated record to the [appropriate office] in substantially the form provided a subsection (c), requesting issuance of a certificate of origin or a certificate of title.

(c) A request by the owner for issuance of a certificate of title or a certificate of origin may be provided to the [appropriate office] substantially the following form:

Request for a Certificate of [Title] [Origin]

[Date]

To: _____

[Appropriate Office]

[Address]

From: _____

[Owner's Name]

[Address]

Re: [Description of Goods]; [VIN]

This is to request that a certificate of [title] [origin] be issued and sent to the owner at the above address.

[Authentication of Owner]

[end of form]

(d) Upon receipt of a request for issuance of a certificate of title or a certificate of origin as provided above, the [appropriate office] shall issue and send to the owner the requested certificate of title or certificate of origin within 15 days.

Reporter's Note

New. *See also* definition of electronic certificate of title at COTA § 1-102.

SECTION 2-402. PRIORITY OF CLAIMS.

If this state issues a certificate of title or a certificate of origin which does not accurately reflect, or omits, an owner's name or interest, or a lien or security interest, or other valid claim or interest, a purchaser who gives value and takes an otherwise valid indorsement of the certificate of title or certificate of origin takes free of any interest to the extent the purchaser has relied in good faith on the certificate of title or certificate of origin.

Reporter's Note

Derived from Article 9 § 9-337. *See also* this draft §§ 2-201(c), 2-203 (BIOCB), 2-204 (Effect of Errors), 2-206, and 3-103. These provisions make clear that interests claimed under an electronic certificate of title or other electronic record are subordinate to those claiming under a CT in the event of a conflict. This is necessary to preserve the traditional primacy of the CT, which is also recognized in Article 9. *But cf.* Article 9 § 9-516(a), *infra* § 3-101.

PART 3

SECURED TRANSACTIONS

SECTION 3-101. COMMUNICATION OF LIEN ENTRY FORM.

(a) Except as otherwise provided in subsection (b), communication of a record that constitutes a lien entry form to the [appropriate office] and tender of the applicable fee or acceptance of the record by that office is sufficient for perfection of the security interest represented by the lien entry form.

(b) Perfection does not occur with respect to a record that the [appropriate office] refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the [appropriate office];

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

(3) the record does not contain the name and mailing address of a secured party of record.

Reporter's Note

This section is modeled on UCC § 9-516. It addresses the same issues as § 9-516, *e.g.* by specifying that perfection occurs upon proper submission of the lien entry form, even if the lien is never notated on the CT.

SECTION 3-102. EFFECTIVE DATE OF LIEN ENTRY FORM. If a record constituting a lien entry form is communicated to the [appropriate office] within [30] days of the

date the security interest attaches, the security interest shall be perfected as of the date the security interest attaches.

Reporter's Note

This is modeled on UCC Article 9 § 9-317(e), which provides a 20 day grace period for perfection of security interests under Article 9. For CT goods this issue is governed by the CT law rather than Article 9, pursuant to Article 9 § 9-311(a)(3). This draft provision covers non-PMSI as well as PMSI transactions, and extends the grace period to 30 days, because of the time often needed to acquire the CT from its prior holder.

This is inconsistent with the Bankruptcy Code grace period at 11 U.S.C. § 574(c)(3)(B), as interpreted by the U.S. Supreme Court in *Fidelity Financial Services v. Fink*, 118 S. Ct. 651 (1998). The bankruptcy rule will control for purposes of preferential transfer issues in bankruptcy cases. However, the latter is a narrow issue that need not override other considerations in a broader CT context. Moreover, other Bankruptcy Code provisions recognize the primacy of state law on this issue. *See, e.g.*, Bankruptcy Code §§ 362, 546, and 547(e)(1)(B). It is possible that some day the *Fink* rationale may be revisited, and even if not some courts have been able to minimize its significance using other theories. *See, e.g., In re Lockhart*, 2000 Bankr. LEXIS 1854 (Bankr. D. Ore., Dec. 15, 2000) (77 day delay in perfection was protected from avoidance as a preference, under the contemporaneous transaction exception at Bankruptcy Code § 547(c)(1)).

Thus, the *Fink* rationale should not override important conflicting state law considerations in drafting a CT law.

SECTION 3-103. PERFECTION OF SECURITY INTERESTS.

(a) Perfection by Filing Lien Entry Form. Except as otherwise provided in the [state] Uniform Commercial Code, a security interest in a vehicle covered by a certificate of title or electronic certificate of title can only be perfected by filing a record of a lien entry form with [appropriate office] or an authorized agent thereof (filing office), pursuant to the provisions of this Act.

(b) When Filing Effective. A filing office may refuse to accept a record for filing only for a reason set forth at Section 3-101(b). Refusal to accept a record for any other reason constitutes filing and perfection. Acceptance of a record for filing that does not meet the

requirements of this section also constitutes filing and perfection. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record as a means of perfection.

(c) Communication of Refusal. If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it, in no event more than two business days after the filing office receives the record.

Reporter's Note

Derived from UCC Article 9 §§ 9-310(a), 9-516(a) and (b), 9-517, and 9-520(a), (b), and (c). The purpose is to establish a system for perfection of security interests by filing a record of a lien entry form with the office that issues certificates of title, or its designated agent, even if the secured party cannot obtain and surrender the CT. This is necessary in order to allow perfection under a title-holding system, within the 20 day grace period allowed under Bankruptcy Code § 547(3)(B) and the Supreme Court's *Fink* decision, since the secured party may not be able to obtain the CT from the prior lien holder in time to meet the 20 day deadline.

This form of non-CT perfection would be effective against lien creditors, but not against a competing party who relies on the CT, pursuant to COTA §§ 2-201(c), 2-203, 2-206, 2-402, and 3-103. The latter are modeled on Article 9 § 9-337 and recognize the primacy of the CT. To be protected against such parties, the CT will have to be obtained and submitted with a lien entry form in the traditional manner.

A model lien entry form can be provided, consistent with the model forms in Article 9 § 9-521.

SECTION 3-104. UNIFORM FORM OF LIEN ENTRY FORM.

SECTION 3-105. DUTIES AND OPERATION OF FILING OFFICE.