

To: Scope and Program Committee
From: LMM, ACH, Study Committee on Certificate of Title Laws
Subj: Study Committee Report
Ref: Statement of Policy of August 02, 1988 ("SOP")
Att: Reporter Alvin Harrell Memo dtd October 11, 2001

Overview

Each year, on the order of 70 million motor vehicles¹ are titled in the United States. They are titled by the states under not less than 16 separate schemes, virtually none of which is practically compatible with others for purposes of information exchange and interchange; indeed, the states vary in designation of the officials who title and transfer and who collect state taxes. There is some variation in definitional scope of titling. Not unlike other states' records, the move from paper to electronic state records is not uniform either within or among states.

Professor Harrell and others, principally through the ABA UCC Committee Task Force on Certificate of Title ("CT") Laws, have been for some years studying the diverse title laws, certainly with the view to a uniform title statute. This Task Force, as well as the study committee, has drawn interest; both have taken comment from representatives of various constituencies. We are comfortable that considerable influential constituencies support the general idea of a uniform title act, although some may have differing views of what the act might contain and how it would be organized. We have not encountered specific objection to the general idea, but we caution that some possible opposition would more likely surface later in the act developmental process.²

Specific private and public groups have explored uniform titling³ within each and over the range of motor vehicles, watercraft, and premanufactured homes; to our knowledge, none has generated or measured a consensus on all crucial issues.

In summary of what follows: (1) Today, in our view, a uniform title law would have significant benefits to the public, both intrastate (that is, some provisions of the act would be of significant benefit to an enacting state even if no other state adopted the act) and interstate. (2) The general concept of a uniform act would have industry support and should have little if any consumer opposition. (3) The

¹ And about 17 million watercraft.

² State officials are prime examples historically.

³ The recent US Coast Guard explorations are a significant example.

principal enactment impediments relate to public officials of the various states, specifically (a) commitments to diverse electronic systems, (b) turf and patronage inertia, and (c) state funding.

Principally because of item (3), one possibility might be that the Study Committee conduct one weekend meeting, after notice and invitation to known constituencies, for evaluation and measurement of whether consensus could be reached on scope and major content objects and whether sufficient support could overcome these item (3) factors.

Brief Commercial Statement

The life of a vehicle CT begins with the first sale of the vehicle for use, when the manufacturer's agent issues a manufacturer's certificate of origin ("MSO") on the basis of which state authorities generate a CT. Historically, titling has been guarded jealously within states, so that possession of and notation of interests on the CT have been the most powerful indications of property interests in the vehicle.

In general, financing of vehicle sale or lease⁴ has been secured and the security noted and recognized physically on the CT⁵. When the lender/lessor has been satisfied, CT notation evidences release of its interest. Sales are effected, license plates obtained, taxes collected or exempted, and some federal and state consumer protections⁶ affixed, to the CT. Historically at least, possession of a properly indorsed, clean CT is the best evidence of ownership, and in the hands of a bfp superior to virtually all interest claims.

The enrichment of states' treasuries is insured by requiring that the operator be in possession of an original or copy of the CT, and collection of taxes accompanies both annual licensing and transfers. The states are not uniform on the identity and authority of those who act for them as title agents, with authority to change state master records, record changes to CT's, collect taxes, and so forth.

Ultimately, a vehicle is scrapped and recycled, at which point the CT has no use or is retired or record. Throughout it's life it has been unique in modern commerce, having characteristics akin to some of those of a bill of sale, a negotiable instrument, a bill of lading, and a financing statement. For present purposes, it's characteristics are grounded in paper, not intangible information.

It is worth noting that titles for watercraft are similar in many ways but differ in two significant aspects – first, generally, they are issued and administered by different state authorities than are vehicles and, second, they are identified by a

⁴ Whether by manufacturer affiliate or independent financier.

⁵ In some states, title laws recognize the primacy of Article 9 perfection for dealer inventory.

⁶ E.g., odometer representations.

hull numbering system which differs from vehicle identification numbers in concept and numbers of digits and letters. Also, most states have enacted statutes specifically aimed at premanufactured homes, many of which contain unique treatments of this special class of titled personal property and some of which recognize migrations of the property to realty.

From a complexity of drafting and enactment viewpoint, each of watercraft and premanufactured homes involves its own groups of constituencies of financiers, manufacturers, administrators, consumers, and governmental agencies. Subspecies such as trailers and small watercraft offer additional peculiarities.

Subjects and Scope

Much more simply stated than it can be drafted, a uniform act would contain provisions for or solutions to the Issues identified in Professor Harrell's Memo, with major elements (here assuming vehicles only) of:

- ◆ Centralized records of titling and transfer⁷
- ◆ The role of title "possession"
- ◆ Manufacturer/dealer/title clerk relationships
- ◆ Medium neutrality (to facilitate migration to electronics)
- ◆ Consistency with Esign and UETA and accommodation of practices
- ◆ Accommodation of both all electronic and casual sale practices
- ◆ State to state recognition
- ◆ Consistency with UCC Articles 2, 2A and 9
- ◆ Consistency with state taxation, collection, inspection and safety laws
- ◆ Consistency with federal law (emissions, safety, odometer, etc.)
- ◆ Consistency with consumer protection laws and regulations
- ◆ Affect on separately distributed and warranted items (tires, batteries, etc.)
- ◆ Provision for replacements, interstate disposition, lost records, etc.

Statement of Policy Criteria

A uniform title act would meet the constitutional criteria set forth in Section 1 of the SOP.

Assuming requisite scope, enabling of electronic titles, and provision for transfers and security interests, the act would reduce overall processing costs and times, provide means for enhanced transfer and notation of liens, and facilitate a variety

⁷

Our expectation is that electronic tokens as titles are less workable toward uniformity, but technology developments could affect this.

of antifraud and enforcement matters. Obviously, then, the act would satisfy paragraphs (2)(a)(1), (3), and (5) of Section 2 of the SOP.

Likewise, there is little doubt that the act would have the potential to meet the acceptance criteria of all of paragraph (2)(b) of the SOP.

The act would meet none of the negative criteria in Section 3 of the SOP.

We consider that evaluation of paragraph (2)(a)(4) criteria is beyond the charge and knowledge of this committee.

With respect to paragraph (2)(a)(2) of the SOP, probability of enactment is high, subject to management of scope, constituency support, and the factors noted above. In addition, even if not enacted by a substantial number of states, the act potentially would promote uniformity and reduce diversity by providing templates for the states in their search for solutions to the subjects treated in the act.

Ancillary Matters for Determination

Assuming an affirmative answer to the central question, major threshold matters to be addressed in the charge to or by a drafting committee should include:

- Scope. The choice is between trying for an omnibus (one strives to avoid the dreaded "H and S" phrase) act covering vehicles, watercraft, and premanufactured homes or one covering vehicles only. The latter choice offers significant drafting time and enactment economies and a limited act could serve as an initial template for further acts or amendments covering the other classes of titled properties.
- Issues. These we believe are best refined at initial meetings of a drafting committee.
- Timing. The choice is between trying to solve the 26 issues identified in Professor Harrell's Memo, or some of them, further in the context of a study committee or in the drafting process. The legal solutions may be easier than the policy matters. The latter choice offers the advantage of more wide inclusion of issues and constituencies.

In conclusion, we believe that constituency participation and commitment will increase with appointment of a drafting committee and the meetings of that committee.