

tion or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

### Official Comment

1. **Source.** Former Section 9-103(2)(a), (b), substantially revised.

2. **Scope of This Section.** This section applies to “goods covered by a certificate of title.” The new definition of “certificate of title” in Section 9-102 makes clear that this section applies not only to certificate-of-title statutes under which perfection occurs upon notation of the security interest on the certificate but also to those that contemplate notation but provide that perfection is achieved by another method, e.g., delivery of designated documents to an official. Subsection (a), which is new, makes clear that this section applies to certificates of a jurisdiction having no other contacts with the goods or the debtor. This result comports with most of the reported cases on the subject and with contemporary business practices in the trucking industry.

3. **Law Governing Perfection and Priority.** Subsection (c) is the basic choice-of-law rule for goods covered by a certificate of title. Perfection and priority of a security interest are governed by the law of the jurisdiction under whose certificate of title the goods are covered from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

Normally, under the law of the relevant jurisdiction, the perfection step would consist of compliance with that jurisdiction’s certificate-of-title statute and a resulting notation of the security interest on the certificate of title. See Section 9-311(b). In the typical case of an automobile or over-the-road truck, a person who wishes to take a security interest in the vehicle can ascertain whether it is subject to any security interests by looking at the certificate of title. But certificates of title cover certain types of goods in some States but not in others. A secured party who does not realize this may extend credit and attempt to perfect by filing in the jurisdiction in which the debtor is located. If the goods had been titled in another jurisdiction, the lender would be unperfected.

Subsection (b) explains when goods become covered by a certificate of title and when they cease to be covered. Goods may become covered by a certificate of title, even though no certificate of title has issued. Former Section 9-103(2)(b) provided that the law of the jurisdiction issuing the certificate ceases to apply upon “surrender” of the certificate. This Article eliminates the concept of “surrender.” However, if the certificate is surrendered in conjunction with an appropriate application for a certificate to be issued by another jurisdiction, the law of the original jurisdiction ceases to apply because the goods became covered subsequently by a certificate of title from another jurisdiction. Alternatively, the law of the original jurisdiction ceases to apply when the certificate “ceases to be effective” under the law of that jurisdiction. Given the diversity in certificate-of-title statutes, the term “effective” is not defined.

4. **Continued Perfection.** The fact that the law of one State ceases to apply under subsection (b) does not mean that a security interest perfected under that law becomes unperfected automatically. In most cases, the security interest will remain perfected. See Section 9-316(d), (e). Moreover, a perfected security interest may be subject to defeat by certain buyers and secured parties. See Section 9-337.

5. **Inventory.** Compliance with a certificate-of-title statute generally is *not* the method of perfecting security interests in inventory. Section 9-311(d) provides that a security interest created in inventory held by a person in the business of selling goods of that kind is subject to the normal filing rules; compliance with a certificate-of-title statute is not necessary or effective to perfect the security interest. Most certificate-of-title statutes are in accord.

The following example explains the subtle relationship between this rule and the choice-of-law rules in Section 9-303 and former Section 9-103(2):

**Example:** Goods are located in State A and covered by a certificate of title issued under the law of State A. The State A certificate of title is “clean”; it does not reflect a security interest. Owner takes the goods to State B and sells (trades in) the goods to Dealer, who is in the business of selling goods of that kind and is located (within the meaning of Section 9-307) in State B. As is customary, Dealer retains the duly assigned State A certificate of title pending resale of the goods. Dealer’s inventory financier, SP,

obtains a security interest in the goods under its after-acquired property clause. Under Section 9-311(d) of both State A and State B, Dealer's inventory financier, SP, must perfect by filing instead of complying with a certificate-of-title statute. If Section 9-303 were read to provide that the law applicable to perfection of SP's security interest is that of State A, because the goods are covered by a State A certificate, then SP would be required to file in State A under State A's Section 9-501. That result would be anomalous, to say the least, since the principle underlying Section 9-311(d) is that the inventory should be treated as ordinary goods.

Section 9-303 (and former Section 9-103(2)) should be read as providing that the law of State B, not State A, applies. A court looking to the forum's Section 9-303(a) would find that Section 9-303 applies only if two conditions are met: (i) the goods are covered by the certificate as explained in Section 9-303(b), i.e., application had been made for a State (here, State A) to issue a certificate of title covering the goods and (ii) the certificate is a "certificate of title" as defined in Section 9-102, i.e., "a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor." Stated otherwise, Section 9-303 applies only when compliance with a certificate-of-title statute, and not filing, is the appropriate method of perfection. Under the law of State A, *for purposes of perfecting SP's security interest in the dealer's inventory*, the proper method of perfection is filing—not compliance with State A's certificate-of-title statute. For that reason, the goods are not covered by a "certificate of title," and the second condition is not met. Thus, Section 9-303 does not apply to the goods. Instead, Section 9-301 applies, and the applicable law is that of State B, where the debtor (dealer) is located.

**6. External Constraints on This Section.** The need to coordinate Article 9 with a variety of nonuniform certificate-of-title statutes, the need to provide rules to take account of situations in which multiple certificates of title are outstanding with respect to particular goods, and the need to govern the transition from perfection by filing in one jurisdiction to perfection by notation in another all create pressure for a detailed and complex set of rules. In an effort to minimize complexity, this Article does not attempt to coordinate Article 9 with the entire array of certificate-of-title statutes. In particular, Sections 9-303, 9-311, and 9-316(d) and (e) assume that the certificate-of-title statutes to which they apply do not have relation-back provisions (i.e., provisions under which perfection is deemed to occur at a time earlier than when the perfection steps actually are taken). A Legislative Note to Section 9-311 recommends the elimination of relation-back provisions in certificate-of-title statutes affecting perfection of security interests.

Ideally, at any given time, only one certificate of title is outstanding with respect to particular goods. In fact, however, sometimes more than one jurisdiction issues more than one certificate of title with respect to the same goods. This situation results from defects in certificate-of-title laws and the interstate coordination of those laws, not from deficiencies in this Article. As long as the possibility of multiple certificates of title remains, the potential for innocent parties to suffer losses will continue. At best, this Article can identify clearly which innocent parties will bear the losses in familiar fact patterns.

As amended in 2000.

See Appendix P for material relating to changes made in Official Comment in 2000.

### § 9-304. Law Governing Perfection and Priority of Security Interests in Deposit Accounts.

(a) [Law of bank's jurisdiction governs.] The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) [Bank's jurisdiction.] The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the