Certificates of Title as a Practical System for Constructive Notice of Security Interests in Motor Vehicles

Donald H. Bond
COMMENTS

CERTIFICATES OF TITLE AS A PRACTICAL SYSTEM FOR CONSTRUCTIVE NOTICE OF SECURITY INTERESTS IN MOTOR VEHICLES

DONALD H. BOND

The position of a person taking security interests in motor vehicles in Washington is plagued with uncertainties. A sharp increase in the rate of defaults on loans so secured could make that position not only uncertain, but precarious. This unsatisfactory state of affairs is caused by the obsolescence of the present system for providing constructive notice of such security interests. A comparison of that system, which consists of the Washington certificate of ownership statute and the conditional sales and chattel mortgage filing statutes, with the recently-drafted Uniform Motor Vehicle Certificate of Title and Anti-Theft Act makes this fact painfully obvious. However, such a comparison should be undertaken, not solely to criticize the existing law, but to determine what should be done to improve that law.

In 1937, with the enactment of what is now the certificate of ownership chapter of the motor vehicle laws of Washington our statute law in this area was cast in its present form. The certificate of ownership chapter provides a system whereby all non-statutory liens on motor vehicles within the scope of its operation could be made a matter of public record. All persons who operate such vehicles must have effective certificates of ownership for those vehicles and comply with the other provisions of the certificate of ownership chapter. Encumbrances other than statutory liens must be declared in applications for certificates of ownership. Where such an encumbrance is declared, a certificate of ownership will be issued to the lienholder of the vehicle. This certificate must contain the name and address of

1 Drafted by the National Conference of Commissioners on Uniform State Laws, approved and recommended for enactment in all the states by the Commissioners at their annual conference, August, 1955. This statute was approved by the American Bar Association August, 1955. It is anticipated that the National Committee on Uniform Traffic Laws and Ordinances soon will also approve this act with some formal changes to conform it to the style of the Uniform Vehicle Code.
2 RCW Chapter 46.12.
3 RCW 46.12.010. RCW 46.16.010 provides that persons operating any vehicle on public highways of the state must have certificates of license registration in force for those vehicles. RCW 46.16.030 exempts vehicles of certain nonresidents from this requirement. RCW 46.16.020 exempts state and publicly owned vehicles.
4 RCW 46.12.030(2).
5 RCW 46.12.050.
the lienholder as well as that of the party who is entitled to possession of the vehicle and who holds it subject to the encumbrance. When a vehicle for which a certificate of title is already in effect is mortgaged, the mortgagor must apply for a new certificate of ownership which will be issued to the mortgagee, and which will list the name and address of the mortgagee and mortgagor on its face. Upon transfer of a vehicle, the transferee, unless he is a dealer, is required to apply for a new certificate of ownership within fifteen days after delivery to him of the vehicle. This application must be accompanied by the old certificate of ownership, endorsed by the former owner and the lienholder, if any. A procedure is provided by which certificates of ownership are cleared of the names of lienholders whose interests have been satisfied.

A certificate of ownership law could be enacted as the exclusive means for providing constructive notice of security interests in motor vehicles, thereby replacing the chattel mortgage and conditional sales filing statutes. No such intent is expressed in the Washington statute. However, in Merchant's Rating & Adjusting Co. v. Skaug, it was held that a mortgagee who had properly filed his security agreement under the chattel mortgage filing statute, but who had failed to comply with the certificate of ownership statute, could not prevail over a subsequent mortgagee or a subsequent purchaser who had relied on the certificate of ownership. The court did not indicate whether compliance with the certificate of ownership statute would protect the mortgagee in absence of compliance with the chattel mortgage filing statute. Subsequently, the court held that a lienholder who had not filed was

6 RCW 46.12.050. It should be noted that in RCW Chapter 46.12 the chattel mortgagee or conditional sales vendor is not referred to as the "lienholder," nor is the chattel mortgagor or conditional sales vendee always referred to as the "owner." Instead the party in possession subject to encumbrances is referred to as the "registered owner," RCW 46.04.060, or "owner," RCW 46.04.380. Where there is no encumbrance he is referred to as the "legal owner," RCW 46.04.270, but where there is an encumbrance the lienholder is referred to as the "legal owner," RCW 46.04.270.

7 RCW 46.12.170.

8 When a transferee is a dealer he is not required to apply for a new certificate of ownership, but may retain the certificate of ownership he received upon the transfer to him, which certificate he must, in turn, deliver to his transferee. RCW 46.12.120.

9 RCW 46.12.100-110.

10 RCW 46.12.170 provides a procedure by which the certificate of ownership is to be surrendered by the lienholder and a new certificate of ownership delivered to the owner on satisfaction of the secured debt.

11 4 Wn.2d 46, 102 P.2d 227 (1940) (the theory of the court was that as between innocent parties the one who made the fraud possible by leaving the mortgagor in possession of the certificate of ownership should bear the loss); Comment, 15 Wash.L.Rev. 182 (1940). A contrary result has been reached as to a judgment creditor. Reconstruction Finance Corp. v. Hambright, 16 Wn.2d 81, 133 P.2d 278 (1943); cf. Junkin v. Anderson, 12 Wn.2d 58, 120 P.2d 548, 123 P.2d 759 (1941).
not protected against a subsequent good faith purchaser of an interest in a motor vehicle although the lienholder had possession of the certificate of title.\textsuperscript{12}

Thus, compliance with the filing statutes does not protect one against subsequent purchasers and encumbrancers who are found to have relied on the certificate of ownership. At best, a lienholder in such a situation faces litigation on the question of whether there has been such reliance if he is to preserve his preferred status. On the other hand, the lender is unable to rely on the certificate of ownership in place of filing because the certificate of ownership apparently does not give protection beyond actual notice of the security interest.

Consequently, today's lender holding security interests in vehicles under Washington law is forced either to gamble with his security by not filing his chattel mortgage or conditional sales contract,\textsuperscript{13} or to follow the cumbersome procedure of complying with both the certificate of ownership and the chattel mortgage or conditional sales filing statutes. The latter practice is wasteful and burdensome because the filing statutes not only duplicate the procedure followed under the certificate of ownership statute, but they also serve a purpose which could be better served by certificates of ownership.

The Uniform Motor Vehicle Certificate of Title and Anti-Theft Act provisions are in many ways similar to those of the present Washington certificate of ownership law. They require that all persons certificates of title for those vehicles.\textsuperscript{14} The names and addresses of existing lienholders in the order of their priority and the date of their security agreements must be shown on applications for first certificates of title.\textsuperscript{16} Where, after original issuance of a certificate of title, a security interest is created, the owner must indicate the name and address of the lienholder and the date of the security agreement on the certificate and deliver it to the lienholder who is to forward it to the department (presumably of licenses).\textsuperscript{18} Each certificate of title issued must contain the above information as it is indicated on

\textsuperscript{12} Cf. General Credit Corp. v. Lee James, Inc., 8 Wn.2d 185, 111 P.2d 762 (1941) (holding for the defendant who took an interest in an automobile without obtaining the certificate of title, the court stating, "It is not unusual for a certificate of title to be lost or mislaid, and James did get the papers necessary to secure a duplicate.").

\textsuperscript{13} This is apparently what some lenders have done, applying the filing fees thus saved to a reserve fund to cover possible losses due to non-filing.

\textsuperscript{14} Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 4(a).

\textsuperscript{15} Id. § 6(a)(3),(b).

\textsuperscript{16} Id. § 21(a),(b). Cf. Id. § 9(c). This procedure is to be followed where a security interest is created at the time of transfer as well as where the owner creates a security interest in a vehicle without transferring possession of the vehicle. Id. § 14(d).
the application or old certificate of title.\textsuperscript{17} When there are one or more lienholders named on a certificate of title, the certificate is to be issued to the first lienholder.\textsuperscript{18} When the security interests indicated on the certificate have been satisfied the certificate is to be cleared as provided in the act.\textsuperscript{19}

These provisions are supplemented by a number of other provisions unlike those of the Washington statute. The draftsmen of the Uniform Act have been careful to provide a procedure for transfer of a vehicle,\textsuperscript{20} or creation of another security interest therein,\textsuperscript{21} where a lienholder is in possession of the certificate of title at the inception of the transaction. They have also provided for maintenance of a central record of all certificates of title, recording them under the title number assigned the vehicle, the manufacturer's or other identifying number of the vehicle, and alphabetically, under the name of the owner.\textsuperscript{22} The Uniform Act also differs from our present statute in that it provides for constructive notice of junior security interests.\textsuperscript{23}

Perhaps the most fundamental difference between the Uniform Act and the Washington certificate of ownership statute is to be found in Section 25 of the former which provides:

The method provided in this act of perfecting and giving notice of security interests subject to this act is exclusive. Security interests subject to this act are hereby exempted from the provisions of law which otherwise require or relate to the filing of instruments creating or evidencing security interests.

If this section were enacted in Washington, persons undertaking transactions within the scope of the certificate of title act would no longer have to resort to the cumbersome and inadequate chattel mortgage and conditional sales filing statutes to insulate their security interests. Transactions so favored under the Uniform Act are those in which security interests are "reserved or created by agreement and which secure payment or performance of an obligation,"\textsuperscript{24} and in which the

\textsuperscript{17} Id. § 9(a)(3).
\textsuperscript{18} Id. § 10. "The certificate of title shall be mailed to the first lienholder named in it or, if none, to the owner." The act also contains specific provisions to this effect where the security interest has been created or reserved on transfer, Id. § 14(d), has been otherwise created by the owner, Id. § 21(d), as well as where a prior security has been satisfied, Id. § 23(a), and upon original issuance of a certificate of title. Id. § 18(a).
\textsuperscript{19} Id. §§ 23(a),(b).
\textsuperscript{20} Id. § 14(c).
\textsuperscript{21} Id. § 21(c).
\textsuperscript{22} Id. § 8(b).
\textsuperscript{23} See RCW 46.12.150 and RCW 46.12.170 which apparently allow for existence of only one security interest at a given time.
\textsuperscript{24} Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 1(k).
security is in a vehicle for which a certificate of title is required.\textsuperscript{25} Certain statutory liens and security interests created by manufacturers or dealers holding vehicles for sale are expressly excepted from the act.\textsuperscript{26}

One of the more beneficial effects of enactment of Section 25 would be the elimination of the vexing problem caused by the difference in requirements for filing between the conditional sales and the chattel mortgage statutes.\textsuperscript{27} Under present law, failure to conform filing to the form in which the transaction was drafted, for example, filing what is found to be a chattel mortgage as a conditional sale contract, results in no effective filing.\textsuperscript{28}

The class of persons protected by the constructive notice provisions of the Uniform Act is indicated in Section 20(a) which provides:

Unless excepted by Section 3, a security interest in a vehicle of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or lienholders of the vehicle unless perfected as provided in this act.

The identity of the class of persons protected by this section is the same whether their security agreements are in the form of chattel mortgages or conditional sales. This may be contrasted with our present filing statutes under which the identity of the class protected varies with the form of the security agreement.\textsuperscript{29} Section 20(a) seemingly does not limit protection to “subsequent transferees or lien-

\textsuperscript{25}Id. § 20(a).

\textsuperscript{26}Id. § 3(a)(liens given by statute or rule of law to suppliers of services or materials for the vehicle), Id. § 3(b)(liens given by statute to the United States, this state or any political subdivision of this state), Id. § 3(c) “A security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale (but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of the security interest).” The bracketed portion of § 3(c) is of particular interest in light of that line of Washington cases which have held against a lender who has complied with the filing requirements, but has left a motor vehicle with a dealer who subsequently sells or encumbers it to a bona fide purchaser who claims adversely to the lender. See Shattuck, Secured Transactions Under the Uniform Commercial Code, 29 Wash.L.Rev. 227 n.137 (1954) where these cases are collected. The adoption of the well-recognized “purchaser in the ordinary course” concept might bring some certainty to this area where the case holdings have been notable for their inconsistency.

\textsuperscript{27}RCW 61.04.020 (chattel mortgages) ; RCW 63.12.010 (conditional sales).

\textsuperscript{28}Veblen v. Foss, 32 Wn.2d 385, 201 P.2d 719 (1949); Hughebanks, Inc. v. Gourley, 12 Wn.2d 44, 120 P.2d 523 (1941).

\textsuperscript{29}RCW 61.04.020 (chattel mortgages—protects all existing and subsequent creditors of the mortgagor whether or not they have a lien on the property and against all subsequent purchasers, pledgees, mortgagees and encumbrancers for value and in good faith); RCW 63.12.010 (conditional sales—makes an unfiled conditional sale absolute as to subsequent creditors of the vendee whether or not they have a lien on the property and as to all bona fide purchasers, pledgees, mortgagees and encumbrancers). See RCW 61.04.020 (chattel mortgage removal statute—property removed from the county in which it was filed is “except between the parties thereto and those having actual notice thereof, exempted from the operation” of the mortgage).
holders" who take in good faith and for value. If this were the operation of this section it would be substantially different from our present law. However, it appears that such was not the intent of the draftsmen of the Uniform Act who seem to have patterned Section 20(a) after a section of the California Vehicle Code which has been construed to offer no protection to purchasers or encumbrancers with actual knowledge. The absence of qualification of the term "creditor" in the section quoted raises similar questions about that protected class: whether protection is limited to lien creditors, and whether existing as well as subsequent creditors are intended to be protected?

The procedure for perfecting a security interest is set out in Section 20(b) which provides:

A security interest is perfected by the delivery to the Department of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the date of his security agreement and the required fee. It is perfected as of the time of its creation if the delivery is completed within ten (10) days thereafter, otherwise, as of the time of the delivery.

Unlike existing law, this section does not require the filing of the security agreement, duly executed with statutory formalities. The Uniform Act does, however, place a duty on the lienholder to disclose certain information, beyond that contained on the certificate, to the owner of the vehicle and other lienholders.

Delivery of the old certificate of title and application to the department as required by Section 20(b) accomplishes state-wide perfection of a security interest in the vehicle which is the subject of these documents. This state-wide perfection would do much to eliminate a

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20 See note 29, supra.
30 Both RCW 61.04.020 and RCW 63.12.010 expressly provide for the protection of creditors whether or not they have a lien. The absence of such a qualification could be taken to indicate an intention that creditors without liens were not intended to be protected. See RCW 65.08.040 (bill of sale statute). In most states only lien creditors are protected. Jones, Chattel Mortgages and Conditional Sales §§ 245, 247b (Bowers ed. 1933); cf. 7 Cal.Jur.2d, Automobiles § 432 (1953).
31 RCW 61.04.020 (chattel mortgages); RCW 63.12.010 (conditional sales). The absence of such a qualification could be taken to indicate an intention that creditors without liens were not intended to be protected. See RCW 65.08.040 (bill of sale statute). In most states only lien creditors are protected. Jones, Chattel Mortgages and Conditional Sales §§ 245, 247b (Bowers ed. 1933); cf. 7 Cal.Jur.2d, Automobiles § 432 (1953).
32 RCW 63.12.010 (conditional sales—protecting only subsequent creditors).
32a "A security interest is 'perfected' when it is valid against third parties generally, subject only to specific statutory exceptions." Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 1(k).
32b RCW 61.04.020, 040 (chattel mortgages); RCW 63.12.010 (conditional sales).
33 See Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 24, "A lienholder named in a certificate of title shall, upon written request of the owner or of another lienholder named on the certificate, disclose any pertinent information as to his security agreement and the indebtedness secured by it."
problem which is most difficult with a chattel as mobile as the motor
vehicle under a filing system like our own: that of determining with
whom to file originally and how to keep that filing effective until the
security interest has been satisfied. At present, the proper place for
filing is determined by the form of security used. Chattel mortgages
must be filed with the county auditor in the county "in which the
mortgaged property is situated." This language, in one case, was
held to mean the place where the purchaser lived, where the vehicle
was delivered, and where it was recited in the mortgage that the
vehicle would be kept, although the car was sold in a different county.
Conditional sales contracts, on the other hand, must be filed with the
county auditor in the county in which the vendee resides at the time
he takes possession of the property. This does not always result
in the conditional sales contract being filed in the county in which
the property is kept. This is the case, for example, where a corporate
vendee has the property in a county other than the one in which his
principal place of business is located.

Since Section 20(b) contemplates state-wide constructive notice,
its enactment would eliminate the necessity of refiling where a
mortgaged vehicle is removed into a county different from that in
which filing has been accomplished. Under present law, if a vehicle
subject to a chattel mortgage is removed to another county, the
mortgagee must refile in the county to which the vehicle has been
removed or with the Secretary of State within thirty days after the
removal. If he fails to do either his interest is susceptible of being
cut off by intervening parties without actual notice of his interest.
While this removal statute adequately protects the interests of those
who need to check the files for possible encumbrances, it places a
burden on mortgagees who must either exercise very close supervision
over their security or file with the Secretary of State in addition to
filing at the outset with the county auditor.

Conversely, under our present conditional sales filing statute, con-
ditional sales vendors already enjoy the advantages of state wide
constructive notice upon accomplishing original filing with the county
auditor. It is those who must check the files for a possible vendor's

35 RCW 61.04.020 (chattel mortgages); RCW 63.12.010 (conditional sales).
36 RCW 61.04.020.
37 Muller v. Bardshar, 119 Wash. 252, 205 Pac. 845 (1922).
38 RCW 63.12.010.
39 Bucknor-Weatherby Co. v. Wuest, 167 Wash. 647, 9 P.2d 1104 (1932); First Nat.
Bank v. Wilcox, 72 Wash. 473, 130 Pac. 756, 131 Pac. 203 (1913).
40 RCW 61.04.090.
41 RCW 61.04.020.
interest in a vehicle no longer situated in the county of original filing who would benefit from enactment of Section 20(b).42

Like our present filing statutes, Section 20(b) provides a ten day "free period" in which filing may be accomplished with a retroactive effect. This section, however, should be compared with the language of our present filing statutes as to the point in time when the "free period" begins. The chattel mortgage statute provides that this period begins with the execution of the mortgage.43 The conditional sales statute provides that it begins when the vendee takes possession.44 However, the cases construing these two Washington filing statutes are unclear45 and appear to offer no guide for determining when the "time of... creation" of a security interest within the meaning of Section 20(b) would be. This matter would have to be determined as a matter of substantive law should such a provision be enacted.

Unlike our present filing statutes, Section 20(b) allows security interests not perfected within the ten day period to be perfected thereafter as of the time that the old certificate of title, application for a new certificate and fee are delivered to the department. This is in sharp contrast with the needlessly harsh provisions of the existing Washington filing statutes which make failure to file within the ten day period an absolute bar to later filing.46 In such cases the only hope of the lienholder under the filing statutes is to obtain the cooperation of the other party in executing a new chattel mortgage of the vehicle.47

42 It may be extremely difficult to determine in which county filing was accomplished even if it is known in which county delivery was made. See note 39, supra.
43 RCW 61.04.020.
44 RCW 63.12.010.
45 Under the chattel mortgage statute the date of execution has been held to be the date of signing and acknowledgement, Greenberg v. Manganese Prod., Inc., 39 Wn.2d 794, 238 P.2d 1194 (1951); the date of acknowledgement, Myers-Shepley Co. v. Milwaukee G.E. Co., 124 Wash. 583, 214 Pac. 1051 (1923); and the date of delivery of the mortgage, Fenby v. Hunt, 53 Wash. 127, 101 Pac. 492 (1909). The latter case has been distinguished in the Greenberg case as being based on an earlier statute, but would seem to be a proper holding as to the date of "creation" of the security interest. The Greenberg case has been strongly criticized. Shattuck, Secured Transactions Under the Uniform Commercial Code, 29 Wash. L. Rev. 203 n.75 (1954). Our court has held that, under the conditional sales statute, the date the vendee takes possession for purposes of determining when the ten day period begins, is the delivery date recited in the contract despite actual delivery at a different time. Malott v. General Mach. Co., 19 Wn.2d 62, 141 P.2d 146 (1943); Grunbaum Bros. Furn. Co. v. Humphrey Inv. Corp., 141 Wash. 329, 251, Pac. 567 (1926); contra, In re Kracke, 1 F.2d 606 (W.D. Wash. 1924). See Shattuck, Secured Transactions Under the Uniform Commercial Code, 29 Wash. L. Rev. 203 n.75a (1954).
47 See Robinson, Thieme & Morris v. Whittier, 112 Wash. 6, 191 Pac. 763 (1920); Cf. Allen v. American Loan & Trust Co., 79 Fed. 695 (9th Cir. 1897).
The Uniform Act contains no provision that the certificate of title shall cease to give constructive notice without some sort of renewal procedure after a given length of time. Apparently, once it is perfected, a security interest will remain insulated indefinitely. This is also the case under the present Washington conditional sales filing statute. By contrast, filing under the chattel mortgage statute must be renewed within two years after the maturity date of the mortgage. Failure to renew subordinates the mortgagee to purchasers and encumbrancers without notice who take after the maturity date of the mortgage. 

The operation of this renewal statute as to creditors is not altogether clear, but persons acquiring the status of creditors two years or more after the maturity date of the mortgage will be prior to the mortgagee in absence of timely renewal. Since renewal is valid for only one year, filing must be extended by filing additional affidavits to preserve it for subsequent years. How our chattel mortgage renewal statute operates where the maturity date is not indicated on the mortgage is unknown.

The Uniform Act, in Section 23(a), provides a procedure for clearing certificates of title after a security interest indicated thereon has been satisfied:

Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the lienholder, he shall, within ten (10) days after demand and, in any event, within thirty (30) days, execute a release of his security interest, in the space provided therefor on the certificate or as the Department prescribes, and mail or deliver the certificate and release to the next lienholder named therein, or, if none, to the owner or any person who delivers to the lienholder an authorization from the owner to receive the certificate. The owner, other than a dealer holding the vehicle for resale, shall promptly cause the certificate and release to be mailed or delivered to the Department, which shall release the lienholder’s rights on the certificate or issue a new certificate.

Section 23(b) provides a similar procedure for release of a junior security interest where the certificate of title is in the possession of a prior lienholder. The sanction for refusal to comply with the above procedure is a $500.00 fine, six months imprisonment or both. The

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48 RCW 61.04.040
49 Best v. Felger, 77 Wash. 115, 137 Pac. 334 (1913).
52 RCW 61.04.050.
53 UNIFORM MOTOR VEHICLE CERTIFICATE OF TITLE AND ANTI-THEFT ACT § 40(b). This is the penalty for wilfully failing to deliver a certificate of title to the department or violating other provisions of the act not constituting a felony. Id. §§ 31(b)(2),(4).
present Washington certificate of ownership\textsuperscript{54} and filing statutes\textsuperscript{55} provide for clearing the records when a security interest is satisfied, but the sanction for failure to indicate the satisfaction of a filed chattel mortgage or conditional sale contract is much less severe than under the Uniform Act: a $25.00 fine.\textsuperscript{56}

Secondary financing has not escaped the attention of the draftsmen of the Uniform Act, who, in Section 22, provide for assignment of his interest by the lienholder:

(a) A lienholder may assign, absolutely or otherwise, his security interest in the vehicle to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the lienholder as the holder of the security interest and the lienholder remains liable for any obligations as lienholder until the assignee is named as lienholder on the certificate.

(b) The assignee may, but need not to perfect the assignment, have the certificate of title endorsed or issued with the assignee named as lienholder, upon delivering to the Department the certificate and an assignment by the lienholder named in the certificate in the form the Department prescribes.

Section 22(b), in effect, provides that an assignment of a security interest in a vehicle is valid against third parties generally, subject to the statutory exception contained in Section 22(a) protecting “persons without notice of the assignment... dealing with the lienholder as the holder of the security interest...” until the assignee is named as lienholder on the certificate of title.\textsuperscript{57} The quoted language of Section 22(a) seems unclear. It appears that “persons... dealing with the lienholder” could include, 1) subsequent assignees of the assignor and transferees of the vehicle who obtain a satisfaction of the security interest from the assignor, 2) attaching or executing creditors,* and 3) obligors, that is, the mortgagors and conditional sales vendees. The inclusion of obligors seems most unlikely as obligors are generally protected, as a matter of contract law, in dealing with assignors until they receive actual notice of assignment, and therefore would not need the protection of this provision. This conclusion is reinforced

\textsuperscript{54} RCW 46.12.170.
\textsuperscript{55} RCW 61.16.040.
\textsuperscript{56} RCW 61.16.050.
\textsuperscript{57} See note 32a, supra.

* Subsequent to the writing of this article, information has been received from the draftsmen of the Uniform Act that it was not their intent to include attaching or executing creditors within the class of persons “dealing with” the lienholder under Section 22(a).
by the fact that if obligors were within the class of "persons" dealing with the lienholder" under Section 22(a) they would be divested of part of the protection which they have traditionally enjoyed under the common law because they would be precluded from safely dealing with their assignors after constructive rather than actual notice of assignment.

Section 22 would clearly change present Washington law. It would require compliance with its procedure for giving constructive notice of assignment of a conditional sale contract before such transactions would be insulated against the parties protected by Section 22(a), whereas assignments of conditional sales contracts are now expressly exempted from any filing requirements. Less change would be effected in the present law governing assignments of chattel mortgages, it being assumed that the protection afforded by Section 22(a) is limited to subsequent assignees of the assignor and transferees of the vehicle obtaining satisfaction from the assignor. Although the pertinent statute now in effect is merely permissive in wording, it has been applied so as to require filing of an assignment of a chattel mortgage to insulate the assignee's interest against a subsequent bona fide purchaser for value claiming acknowledgement of satisfaction of the mortgage by a mortgagee-assignor. It also seems likely that this statute requires such filing for protection against subsequent assignees of the assignor of a chattel mortgage.

In Section 20(c) the Uniform Act resolves some of the problems of the validity and perfection of security interests in conflicts of law which are presently unresolved. That section provides:

If a vehicle is subject to a security interest when brought into this state, the validity of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest attached, subject to the following:

(1) If the parties understood at the time the security interest attached that the vehicle would be kept in this state and it was brought into this state within thirty (30) days thereafter for purposes other than transportation through this state, the validity of the security interest in this state is determined by the law of this state.

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68 RCW 63.12.030.
69 RCW 61.16.010.
60 Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901).
61 See Price v. Northern Bond & Mortgage Co., 161 Wash. 690, 297 Pac. 786 (1931) (real estate mortgage); General Credit Corp. v. Lee James, Inc., 8 Wn.2d 185, 111 P.2d 762 (1941) (a complex transaction involving an unfiled assignment of a chattel mortgage considered by the court whose holding suggests that the principle of the Price case applies equally to chattel mortgages, although the status of the party who took, apparently relying on absence of any filed assignments, is unclear.)
(2) If the security interest was perfected under the law of the jurisdiction where the vehicle was when the security interest attached, the following rules apply:

(A) If the name of the lienholder is shown on an existing certificate of title issued by that jurisdiction, his security interest continues perfected in this state.

(B) If the name of the lienholder is not shown on an existing certificate of title issued by that jurisdiction, the security interest continues perfected in this state for four months after a first certificate of title of the vehicle is issued in this state, and also, thereafter if, within the four (4) month period, it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four (4) month period; in that case perfection dates from the time of perfection in this state.

(3) If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest attached, it may be perfected in this state; in that case, perfection dates from the time of perfection in this state.

(4) A security interest may be perfected under paragraph (2) (B) or paragraph (3) of this Sub-section either as provided in Sub-section (b) or by the lienholder delivering to the Department a notice of security interest in the form the Department prescribes and the required fee.

The general rule, as set out in the preceding section, is in accord with the Restatement of Conflict of Laws which provides that the validity of chattel mortgages is to be tested by the law of the situs of the property at the time of execution of the mortgage, and the validity of conditional sales contracts is to be tested by the law of the situs of the property at the time of sale. This also appears to be the law in Washington as to conditional sales, and, although no holdings in point have been found, the expectable result as to chattel mortgages.

Where a chattel mortgage or conditional sale of a motor vehicle is validly made under the laws of another state and the vehicle is thereafter removed to Washington without the consent of the lienholder the general rule of Section 20(c) would apply and the security agreement would be valid in Washington. This is in accord with present

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63 Restatement, Conflict of Laws § 272 (1934); see 11 Am. Jur., Conflict of Law § 77 (1937).
64 See Morton Organ Co. v. Armour, 173 Wash. 462, 23 P.2d 887 (1933) (without comment the court applied the law of the state of delivery, i.e., Washington, in determining whether the agreement, which contained a recital that it was executed under and governed by the law of California, was valid as a conditional sale); cf. Restatement, Conflict of Law § 272, comment c. (1934).
Washington case law governing conditional sales, and with the expectable result where a chattel mortgage is involved.

Section 20(c)(1) codifies the concept that if the parties to the security agreement contemplate immediate removal of the property security to another state, the validity of the security agreement is to be tested by the law of the state to which a removal has been made. The principle, one not foreign to Washington law, has been applied to determine the validity of a conditional sale. A result consistent with that principle also has been reached in determining the validity of a chattel mortgage. The Uniform Act, however, would restrict the concept by limiting its application to situations where there is not only consent to the removal of a vehicle by its lienholder, but also, 1) an understanding at the time of the security agreement that such removal would be made, and 2) an actual removal into the state within thirty days thereafter before validity of the security agreement will be determined by Washington law. This section also makes it clear that it would not apply to removals of a transitory character.

In Section 20(c)(2) provision is made for perfecting a security interest which has been previously perfected in another state. Section 20(c)(2)(A) allows for "automatic" perfection of security interests shown on certificates of title from other states. In such cases perfection results from the operation of certain other sections of the Uniform Act which provide that current certificates must accompany applica-

65 Campbell v. Frets, 167 Wash. 576, 9 P.2d 1083 (1932); Roedecker v. Jannah, 125 Wash. 137, 215 Pac. 364 (1923) (a conditional sales contract valid under California law, but which could not be validly created under Washington internal law because it gave the vendor the cumulative remedies of repossession and a right against the vendee for any deficiency, was held enforceable in Washington against an innocent purchaser where the vehicle had been removed to Washington without the consent of the vendor); see Restatement, Conflict of Law §§ 273, 275 (1934).
66 Roedecker v. Jannah, 125 Wash. 137, 215 Pac. 364 (1923) (dictum); see Restatement, Conflict of Laws § 266 (1934).
67 See Campbell v. Frets, 167 Wash. 576, 9 P.2d 1083 (1932). There the buyer and seller of an automobile executed a conditional sales contract in North Dakota, the buyer to take delivery in that state. It was contemplated that the buyer would immediately take the vehicle into South Dakota, which he did. Some time later the buyer removed the vehicle to Washington without the consent of the seller. It was held that the contract was enforceable in Washington, although it gave the seller the cumulative remedies of repossession and a right against the vendee for any deficiency remaining after sale of the vehicle, as it was valid under the law of South Dakota. Cf. Sound Industrial Loan Co. v. Frank Allyn, Inc. 149 Wash. 123, 270 Pac. 295 (1928); Weber Showcase & Fixture Co. v. Waugh, 42 F.2d 515 (W.D.Wash. 1930).
68 Jones v. North Pacific Fish & Oil Co., 42 Wash. 332, 84 Pac. 1122 (1906). But the rationale of the court went beyond this. It was stated that by consenting to the removal of the property from F-I, the mortgagee waived his mortgage as to all parties except the mortgagor.
69 See Sound Industrial Loan Co. v. Frank Allyn, Inc., 149 Wash. 123, 270 Pac. 295 (1928) where the court treated knowledge of removal after the fact plus apparent acquiescence thereafter as equivalent to consent to removal given at the outset.
tions for new local certificates of title, that any security interests shown thereon must be reflected on that local certificate, and that the new local certificate must be delivered to the lienholder shown on the prior certificate.

Where security interests that have been perfected in other states are not shown on an out-of-state certificate of title, a four month period is given by Section 20(c)(2)(B) during which time the out-of-state perfection continues and the security interest may be perfected locally by complying with Section 20(c)(4) without a lapse of constructive notice to local creditors and purchasers. During this period prior owners, lienholders and local purchasers are protected by a requirement that a bond be filed with the department conditioned to indemnify them against loss caused by issuance of a local certificate of title. Where such a bond is not filed and a local certificate is issued, local parties are protected by the distinctive appearance which must be given the local certificate of title. This appearance will put all those dealing with the certificate on inquiry as to the existence of undisclosed liens.

The procedure by which all out-of-state security interests, other than those indicated on a valid certificate of title, may be perfected is indicated in Section 20(c)(4).

Far different from the above detailed statutory provisions are our own filing statutes which are not designed to allow perfection of security interests in vehicles brought in from other states. Except in the rare cases where it is possible to file the out of state transaction within the ten day free period, such perfection seems impossible. Our court's position has been that where the parties do not intend to remove chattels from other states at the time of sale our conditional sales statute is not applicable, but that where such removal was contemplated and takes place local filing may be mandatory. In the former case there is an obvious hardship upon parties who ordinarily would be protected by our filing statutes, and who have no practical means of getting adequate constructive notice of interests of record.

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70 Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 6(c)(1).
71 Id. §§ 9(a)(3).
72 Id. § 10.
73 Id. § 11(b).
74 Id. § 9(b).
75 RCW 61.04.020; RCW 63.12.010.
76 See Campbell Co. v. Frête, 167 Wash. 576, 9 P.2d 1083 (1932); Roedecker v. Jannah, 125 Wash. 137, 215 Pac. 364 (1923).
77 See Sound Industrial Loan Co. v. Frank Allyn, Inc., 149 Wash. 123, 270 Pac. 295 (1928).
in another state. In the latter case there is an equally obvious hard-
ship on the lienholder. In this area the enactment of Section 20(c)
would be manifestly beneficial.

In conclusion, it should be noted that all the provisions of the
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act have
not been examined. Indeed, the Anti-Theft provisions have been
completely ignored. This is consistent with the purpose of this
comment, which is to point out, by a comparison of the provisions
of the Uniform Act governing constructive notice of security interests
in motor vehicles with the existing law in Washington, in what ways
our local law might be improved. It is not contended that all provi-
sions of the Uniform Act are suitable for enactment in Washington.
It is contended, however, that the system of constructive notice pro-
vided in the Uniform Act is far more adequate than that which we
now have in Washington, and that the best way to improve the present
system is to follow the fundamental plan of the Uniform Motor
Vehicle Certificate of Title and Anti-Theft Act. The basic statutory
machinery for use of a certificate of title to give constructive notice
of security interests in motor vehicles already exists in Washington.
Motor vehicle owners would probably find the mechanics of a system
such as that contemplated by the Uniform Act little different from
that with which they have been dealing for almost twenty years. The
change could be made effectively by enactment of legislation making
the present certificate of ownership the exclusive medium for giving
constructive notice of security interests in motor vehicles, and making
such other changes as might be necessary in order to adapt the existing
system to this new function. But a wholly adequate change would also
deal with other related problems, including secondary financing and
conflict of laws. The weaknesses of the present system indicate the
need. The Uniform Act offers a solution. Washington no longer need
be without a practical system for giving constructive notice of security
interests in motor vehicles.

78 There are many other provisions of the Uniform Motor Vehicle Certificate of
Title and Anti-Theft Act which could be profitably examined. Among them are
those sections providing for transfers to dealers Id. § 15, transfers by operation of law,
Id. § 16, and those sections which apply where the certificate of title has been lost,
stolen or mutilated, Id. § 13 all of which are similar to provisions of our present cer-
tificate of ownership statute. Other sections of interest are those which give the Depart-
ment of Licenses power to revoke or suspend certificates of title, Id. § 26, to prescribe
forms, Id. § 28(a), to conduct investigations, Id. § 28 (b) (1) and to make reasonable
rules and regulations. Id. § 28(b)(2). Also of interest are those sections which entitle
persons aggrieved by acts or omissions of the Department of Licenses under the act to
administrative hearings, Id. § 29, and judicial review thereof. Id. § 30.