

SENATE BILL NO. 77

BY SENATOR MILLER (On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Arts. 2674, 2681, 2711, 2712, and 2713, and to enact
3 Section 5 of Chapter 2 of Title IX of Book III of the Civil Code, to be comprised of
4 Civil Code Arts. 2681.1 and 2681.2, and Civil Code Art. 2713.1, relative to leases
5 of movable property; to provide for effects against third persons; to provide relative
6 to delivery of leased goods; to provide for the effects of leases by nonowners; to
7 provide relative to transfers of property subject to a lease; to provide relative to
8 sublease and the assignment and encumbrance of lease interests; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Civil Code Arts. 2674, 2681, 2711, 2712, and 2713 are hereby amended
12 and reenacted and Section 5 of Chapter 2 of Title IX of Book III of the Civil Code, to be
13 comprised of Civil Code Arts. 2681.1 and 2681.2, and Civil Code Art. 2713.1 are hereby
14 enacted to read as follows:

15 Art. 2674. Ownership of the thing

16 A lease of a thing that does not belong to the lessor may nevertheless be
17 binding on the parties.

18 **A lease of a corporeal movable that does not belong to the lessor has**
19 **effect against the owner if the lessor has possession of the thing with the consent**
20 **of the owner, is a merchant customarily selling or leasing similar things, and**
21 **leases the thing for fair value in the regular course of the lessor's business to a**
22 **lessee in good faith.**

23 Revision Comments – 2026

24 (a) The second paragraph of this Article is new. It articulates a rule that aligns
25 with the principles set forth in Article 520 and with the doctrine of entrustment found
26 in the Uniform Commercial Code. See U.C.C. Sections 2-403 and 2A-305(2). Under
27 Article 520, a merchant in possession of a corporeal movable with the owner's
28 consent may transfer ownership of the movable in the regular course of business to
29 a transferee who is in good faith and pays fair value. That provision is designed to
30 protect the rights of persons who reasonably and honestly believe that the person

1 with whom they are dealing has the power to transfer the movable. In the same vein,
 2 this Article protects a lessee who leases from someone who he reasonably and
 3 honestly believes has the power to lease the movable. For example, if the owner of
 4 a corporeal movable places it in the possession of a repairperson who also
 5 customarily sells or leases things of the same kind, and the repairperson leases the
 6 thing for fair value during the regular course of its business to a lessee in good faith,
 7 the lease has effect against the owner of the thing. Similarly, this Article protects a
 8 sublessee of a merchant who subleases a corporeal movable beyond the terms of the
 9 prime lease, provided that the sublease is executed for fair value in the regular course
 10 of the merchant's business to a sublessee in good faith. In this way, this Article
 11 operates as an exception to the general limitation on the rights of sublessees stated
 12 in Article 2713.1 and is consistent with U.C.C. Section 2A-305(2).

13 (b) The term "possession," as used in this Article and in Article 520, refers
 14 to precarious possession, which is defined in Article 3437 as the exercise of
 15 possession over a thing with the permission of or on behalf of the owner or
 16 possessor. See A.N. Yiannopoulos & Ronald J. Scalise, Jr., Louisiana Civil Law
 17 Treatise: Property §12:20.

18 (c) The concept of good faith adopted in this Article derives from Article 523,
 19 according to which an acquirer of a corporeal movable is in good faith unless he
 20 knows, or should have known, that the transferor was not the owner. Under that
 21 Article, good faith is presumed. See *Brown and Root, Inc. v. Southeast Equipment*
 22 *Co., Inc.* 470 So. 2d 516 (La. App. 1 Cir. 1985). If, however, the acquirer has notice
 23 of facts that would put a reasonably prudent person on inquiry, the acquirer is under
 24 a duty to investigate with the view of ascertaining the true situation. See Article 523,
 25 cmt. (b). By analogy, a lessee is in good faith unless he has actual or constructive
 26 knowledge that his lessor exceeds his right to lease the thing.

27 (d) When the lease of a thing that does not belong to the lessor has effect
 28 against the owner under the second paragraph of this Article, the owner may not
 29 evict the lessee. Absent an agreement to the contrary, however, the owner is not the
 30 lessor, is not personally bound by the lessor's obligations, and is not subrogated to
 31 the rights of the lessor under the lease. The owner may have a delictual or contractual
 32 action against the lessor, depending upon the circumstances, for any loss that the
 33 owner sustains as a result of the lease.

34 (e) The second paragraph of this Article does not apply when a lease is
 35 binding on the owner by operation of the law of mandate, according to which a lease
 36 made by someone other than the owner of the thing may be binding on the owner due
 37 to the lessor's actual or apparent authority to lease it. See Article 2989 et seq.

38 * * *

39 Art. 2681. Form

40 A lease may be made orally or in writing. ~~A lease of an immovable is not~~
 41 ~~effective against third persons until filed for recordation in the manner prescribed by~~
 42 ~~legislation.~~

43 **SECTION 5. EFFECTS AGAINST THIRD PERSONS**

44 **Art. 2681.1. Lease of an immovable**

45 **A lease of an immovable has effect against third persons from the time**
 46 **that it is filed for registry in the manner prescribed by legislation.**

47 Revision Comments – 2026

48 This revision does not change the law. In the civil law tradition, a lease is a
 49 contract that imposes personal obligations on the lessor and the lessee but does not

1 create real rights. A.N. Yiannopoulos & Ronald J. Scalise, Jr., Louisiana Civil Law
 2 Treatise: Property §9:26. Absent legislation to the contrary, a lease has no effect
 3 against one who is not a party to or bound by the lease. *Id.* With respect to
 4 immovables, Louisiana legislation and jurisprudence have long provided that a lease
 5 of an immovable has effect against third persons once it is filed for registry in the
 6 conveyance records of the parish where the immovable is located. See R.S.
 7 9:2721(A) (repealed); Articles 3338 and 3346; Summers v. Clark, 30 La. Ann. 436
 8 (La. 1878); Tate v. Fakouri, 118 So. 2d 464 (La. App. 1 Cir. 1959); Avenue Plaza,
 9 L.L.C. v. Falgoust, 654 So. 2d 838 (La. App. 4 Cir. 1995).

10 **Art. 2681.2. Lease of a movable**

11 **A lease of a corporeal movable has effect against third persons upon**
 12 **actual delivery of the movable to the lessee who is in good faith and ceases to**
 13 **have that effect when the thing is returned to the lessor or his successor.**

14 Revision Comments – 2026

15 (a) This Article is new. In the civil law tradition, a lease is a contract that
 16 imposes personal obligations on the lessor and the lessee but does not create real
 17 rights. A.N. Yiannopoulos & Ronald J. Scalise, Jr., Louisiana Civil Law Treatise:
 18 Property §9:26. Absent legislation to the contrary, a lease has no effect against one
 19 who is not a party to or bound by it. *Id.* Article 2733 of the Civil Code of 1870
 20 provided that the purchaser of a leased thing "can not turn out the tenant before his
 21 lease has expired, unless the contrary has been stipulated in the contract." That article
 22 was repealed in the 2004 revision of the title on "Lease" and replaced with Article
 23 2711, which provides instead that "[t]he transfer of the leased thing does not
 24 terminate the lease, unless the contrary had been agreed between the lessor and the
 25 lessee." While the 2004 Revision Comments to Article 2711 suggest that the lease
 26 of a movable has effect against third persons "because [a transferee's] right to use
 27 [the leased thing] has been alienated prior to his acquisition," the repeal of Article
 28 2733 of the Civil Code of 1870 cast doubt on that proposition. This revision
 29 explicitly adopts a rule that a lease of a corporeal movable is effective against third
 30 persons upon actual delivery of the movable to the lessee, provided that the lessee
 31 is in good faith.

32 (b) This rule is consistent with the modern civil law approach to leases of
 33 movables, which affords some protections for the lessee against third persons. For
 34 example, in France a good faith lessee in actual possession is preferred over a
 35 subsequent lessee of the movable. See 20 Baudry-Lacantinerie & Wahl, *Traité*
 36 *théorique et pratique de droit civil français* Nos 138–45 (3d ed. 1906); cf. Fr. C. Civ.
 37 Art. 1198. While French law generally adheres to the traditional view that a lease of
 38 a movable is not enforceable against a subsequent purchaser of the thing, modern
 39 commentators take the view that the purchaser of a leased movable ought to be
 40 bound to the lease if the lease was by authentic act or if the lease was made known
 41 to the purchaser. See, e.g., Philippe Malaurie et al., *Droit civil – Contrats spéciaux*
 42 No. 621 (10th ed. 2018); 10 Planiol & Ripert, *Traité pratique de droit civil français*
 43 No. 732 (2d ed. 1956); 5 Aubry & Rau, *Droit civil français* §369 at 278 n.31 (6th ed.
 44 1952). Under German and Greek law, in the case of successive leases of the same
 45 thing, the person who first takes delivery in good faith prevails. In the event of an
 46 alienation of the leased thing, if the lessee has taken delivery in good faith before the
 47 alienation, the new owner is relegated to the possession of the thing subject to the
 48 lessee's right of detention. See 2 Karl Larenz, *Lehrbuch des Schuldrechts*
 49 *(Besonderer Teil)* 240-41 (13th ed. 1986); 1 Ioannis Delegiannis & Panagiotis
 50 Kornilakis, *Special Law of Obligations* 453 n.1, 454 (1992).

51 (c) The Uniform Commercial Code also provides for the enforceability of a
 52 lease of goods against third persons. U.C.C. Section 2A-301 provides: "Except as
 53 otherwise provided...a lease contract is effective and enforceable according to its
 54 terms between the parties, against purchasers of the goods and against creditors of

1 the parties." Moreover, under U.C.C. Section 2A-302, a lease is effective "whether
 2 the lessor, the lessee, or a third party has possession of the goods." Thus, under
 3 U.C.C. Article 2A, a lease of goods is effective against third persons by virtue of the
 4 very existence of the lease contract. The rule adopted in this Article is narrower than
 5 the U.C.C. approach, as the protections conferred by this Article are dependent upon
 6 the lessee's good faith and actual delivery to the lessee.

7 (d) This Article requires "actual delivery" of the movable to the lessee for the
 8 lease to be effective against third persons. "Actual delivery," which occurs when the
 9 movable is physically handed over to the lessee, is contrasted with "constructive
 10 delivery," which occurs when the transfer of possession is not physical but is instead
 11 symbolized by other actions or agreements, such as handing over the key to the place
 12 where the item is stored, negotiating a document of title, or even by the mere consent
 13 of the parties if the thing cannot be transported at the time of the lease. See Article
 14 2477 and cmt. (b).

15 (e) The effectiveness of the lease against third persons is dependent upon the
 16 lessee's good faith. For example, in the case of successive leases, a subsequent lease
 17 is enforceable against the first lessee if the subsequent lessee takes actual delivery
 18 first in time and is in good faith. The concept of good faith adopted in this Article
 19 derives from Article 523, according to which an acquirer of a corporeal movable is
 20 in good faith unless he knows, or should have known, that the transferor was not the
 21 owner. Under that Article, good faith is presumed. See *Brown and Root, Inc. v.*
 22 *Southeast Equipment Co., Inc*, 470 So.2d 516 (La. App. 1 Cir. 1985). If, however,
 23 the acquirer has notice of facts that would put a reasonably prudent person on
 24 inquiry, the acquirer is under a duty to investigate with the view of ascertaining the
 25 true situation. See Article 523, cmt. (b). By analogy, a lessee is in good faith unless
 26 he has actual or constructive knowledge of conflicting rights of a third person to the
 27 leased thing.

28 (f) Under this Article, the effectiveness of the lease against third persons
 29 ceases when the thing is returned to the lessor, whether voluntarily or involuntarily.
 30 If, for example, the lessee temporarily returns the movable to the lessor for repairs,
 31 and, while the thing is in the possession of the lessor, the lessor enters into a new
 32 lease with a subsequent lessee in good faith to whom the lessor actually delivers the
 33 leased movable, the subsequent lessee takes the movable free of the existing lease.
 34 This Article adopts an approach to this problem that is different from that found in
 35 the Uniform Commercial Code. U.C.C. Section 2A-304(2) provides that when the
 36 leased goods are "entrusted" to the lessor, a subsequent lessee in the ordinary course
 37 of business from the lessor obtains the goods free of the existing contract if the lessor
 38 was a merchant dealing in goods of that kind. U.C.C. Section 2-403 provides for the
 39 same result if the lessor, having been "entrusted" with the goods during the lease,
 40 sells them to a third person. By contrast, under this Article, a subsequent lessee or
 41 transferee of a lessor to whom the thing has been returned acquires the thing free of
 42 the existing lease regardless of whether the lessor is a merchant and irrespective of
 43 whether the subsequent transfer was made in the regular course of the lessor's
 44 business. The rule set forth in this Article applies whether the thing is returned to the
 45 lessor or the lessor's successor. In this context, "successor" has the meaning provided
 46 in Article 3506.

47 (g) This Article alone does not address all possible disputes that may arise
 48 between a lessee of a corporeal movable and a third person to the lease. For example,
 49 to resolve contests between a lessee and a transferee of the same corporeal movable,
 50 this Article must be read *in pari materia* with Article 518, which provides that the
 51 transfer of ownership of a corporeal movable takes place against third persons when
 52 the possession of the movable is delivered to the transferee, and if possession has not
 53 yet been delivered, then a subsequent transferee in good faith to whom possession
 54 is delivered acquires ownership. If the lessee takes actual delivery of the thing in
 55 good faith before the transferee takes possession of it, then the lessee prevails. By
 56 contrast, if the transferee takes possession of the thing in good faith before the lessee
 57 takes actual delivery of it, then the transferee prevails. Contests may also arise
 58 between the lessee and a third person who claims a right in the thing by virtue of the
 59 dissolution, simulation, or nullity of the contract by which the lessor obtained the

1 thing. In those cases, this Article must be read *in pari materia* with Articles 2021,
 2 2028, and 2035. For example, under Article 2035, the nullity of a contract does not
 3 impair the rights acquired through an onerous contract by a third person in good
 4 faith. Thus, if the lessor's seller annuls the sale by which the lessor obtained
 5 ownership of the leased thing on grounds of fraud or error, the lease is enforceable
 6 against the seller only if the lessee took actual delivery of the thing in good faith
 7 before the sale was declared null. This result is in line with the Uniform Commercial
 8 Code, according to which a lessor with "voidable title" has the power to transfer a
 9 good leasehold interest to a "good faith subsequent lessee for value." See U.C.C.
 10 Section 2A-304(1).

11 (h) This Article does not address the rights of a sublessee against a prime
 12 lessor, as those rights are instead governed by Article 2713.1.

13 * * *

14 Art. 2711. Transfer of thing **by lessor** does not terminate lease

15 The transfer of the leased thing **by the lessor** does not terminate the lease;
 16 ~~unless the contrary had been agreed between the lessor and the lessee.~~ **The lessee**
 17 **has an action against the lessor for any loss that the lessee sustains as a result**
 18 **of the transfer.**

19 Revision Comments – 2026

20 (a) This revision does not change the law. This Article combines former
 21 Articles 2711 and 2712 to make clear that the principle stated in the second sentence
 22 of former Article 2712 applies equally to movables and immovables. As under prior
 23 law, the transfer of the leased thing does not terminate the lease, which continues to
 24 have effects between the lessor and lessee. This is consistent with the principle that
 25 "[a] lease of a thing that does not belong to the lessor may nevertheless be binding
 26 on the parties," Article 2674, and that "ownership of the thing by the lessor is not an
 27 essential element of the contract of lease." *Id.*, cmt. (c).

28 (b) Following a transfer of a leased thing, the lessee has an action against the
 29 lessor for any loss that the lessee sustains as a result of the transfer. For example, if
 30 the lease was not enforceable against third persons at the time of the transfer and the
 31 lessor transfers the leased thing to a person who exercises the right to evict the lessee
 32 before the end of the term, the lessor has failed to perform obligations under the
 33 warranty of peaceful possession. See Article 2700. The consequences of this breach
 34 are determined under the law of conventional obligations and may consist of
 35 injunctive relief, dissolution of the lease, or damages, according to the
 36 circumstances. See *id.*, cmt. (b).

37 (c) As under prior law, the continuation of the lease following transfer of the
 38 leased thing and the lessee's rights against the lessor following the transfer are
 39 matters of suppletive law and may be modified or negated by the parties' agreement.

40 Art. 2712. Transfer of ~~immovable subject to unrecorded lease~~ **thing does not**
 41 **transfer rights and obligations of lease**

42 ~~A third person who acquires an immovable that is subject to an unrecorded~~
 43 ~~lease is not bound by the lease.~~

44 ~~In the absence of a contrary provision in the lease contract, the lessee has an~~
 45 ~~action against the lessor for any loss the lessee sustained as a result of the transfer.~~

1 **The transferee of a thing that is subject to a lease is not legally**
 2 **subrogated to the rights of his transferor and is not personally bound by the**
 3 **transferor's obligations under the lease unless the transferee assumes them.**

4 Revision Comments – 2026

5 This revision does not change the law. This Article restates the principle of
 6 Article 1764 that a particular successor, that is, one who acquires a thing by
 7 particular title, is not bound by the personal obligations of the transferor with respect
 8 to the thing, unless the particular successor has assumed those obligations. A
 9 particular successor likewise does not acquire any personal rights of the transferor
 10 in the absence of a conventional subrogation to those rights by the transferor. See
 11 Article 1764, cmt. (d). In the context of lease, this means that, unless there is an
 12 agreement to the contrary, the transferee of a thing that is subject to lease does not
 13 become the lessor, is not bound by the lessor's obligations, and does not enjoy the
 14 lessor's rights in the lease. If the lessor has not assigned the right to the rent to the
 15 transferee, the lessee remains obligated to pay rent to the lessor and may not refuse
 16 to pay rent or perform his other obligations because of the lessor's lack of ownership.

17 Art. 2713. ~~Lessee's right~~ **Right** to sublease, assign, or encumber

18 The **Each party has the right to assign or encumber his rights in the**
 19 **lease, and the** lessee has the right to sublease the leased thing ~~or to assign or~~
 20 ~~encumber his rights in the lease, unless.~~ **These rights may be** expressly prohibited
 21 by the contract of lease, **except as otherwise provided by legislation.**

22 A provision **in a lease of an immovable** that prohibits ~~one of these rights~~ **the**
 23 **right of the lessee to assign, encumber, or sublease** is deemed to prohibit the
 24 others, unless a contrary intent is expressed. In all other respects, a provision that
 25 prohibits ~~subleasing,~~ **the lessee of an immovable from** assigning, ~~or encumbering,~~
 26 **or subleasing** is to be strictly construed against the lessor.

27 Revision Comments – 2026

28 (a) This revision makes explicit that the lessor has the right to assign or
 29 encumber his rights in the lease, unless expressly prohibited by the contract of lease.
 30 Prior law addressed only the right of the lessee to assign or encumber his rights in
 31 the lease or to sublease the leased thing.

32 (b) The parties' freedom to restrict the lessor's rights under this Article may
 33 be curtailed by other law. See, e.g., Article 3163 (leases of immovables); R.S. 10:9-
 34 407 (leases of movables).

35 (c) The second paragraph of this Article changes the law in part. Under the
 36 previous version of this Article, a provision in the lease, whether of movables or
 37 immovables, that prohibited subleasing, assigning, or encumbering was deemed to
 38 prohibit the others, unless a contrary intent was expressed, and in all other respects,
 39 a provision prohibiting subleasing, assigning, or encumbering was to be strictly
 40 construed against the lessor. This revision continues that rule of construction of
 41 leases of immovables, but such a construction does not apply to leases of movables.
 42 The interpretation of a lease of movables, like any contract, is governed by the
 43 general rules governing the interpretation of conventional obligations. See Articles
 44 2045 through 2057.

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Art. 2713.1. Rights of sublessee or assignee

Except as otherwise provided by legislation, a person to whom a lessee subleases the thing or assigns his rights in the lease acquires no greater rights than the lessee to the use and enjoyment of the thing.

Revision Comments – 2026

(a) This Article restates a principle that has long been recognized in the Louisiana jurisprudence. See *Standard Oil Co. of Louisiana v. Joy*, 150 So. 443 (La. App. Orl. 1933); *Scott v. Kalip*, 197 So. 205 (La. App. 2 Cir. 1940); *Ogden v. John Jay Esthetic Salons, Inc.*, 470 So. 2d 521 (La. App. 1 Cir. 1985); *Brown v. Mayfield*, 488 So. 2d 322 (La. App. 3 Cir. 1986). With respect to movable things, the rule set forth in this Article is equivalent to that set forth in U.C.C Section 2A-305(1): "[A] buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and...takes subject to the existing lease contract."

(b) As an exception to the general rule found in this Article, Article 2674 allows a good faith sublessee of a corporeal movable to acquire greater rights than those provided by the prime lease under the limited circumstances described in that article. This exception is designed to protect the rights of a sublessee who reasonably and honestly believes that the person with whom he is dealing is not restricted in his power to lease the movable. See also Article 520.

(c) This Article does not displace other provisions of Louisiana law that address the rights of a sublessee of a thing vis-à-vis the prime lessor. First, this Article must be read *in pari materia* with Article 2681.2, under which a sublease, like any lease, has effect against third persons, including the prime lessor, upon actual delivery of the movable to the sublessee in good faith. In cases of dissolution, simulation, or nullity of the contract by which the sublessor obtained the thing, this Article must also be read *in pari materia* with Articles 2021, 2028, and 2035. For example, under Article 2035, the nullity of a contract does not impair the rights acquired through an onerous contract by a third person in good faith. Thus, if the sublessor's lessor annuls the prime lease on grounds of fraud or error, the sublease remains effective if the sublessee took delivery of the thing in good faith before the prime lease was declared null. This result is consistent with the Uniform Commercial Code, according to which a sublessor with a "voidable leasehold interest" has the power to transfer a good leasehold interest to a "good faith sublessee for value." See U.C.C. Section 2A-305(1).

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____