

2023 Regular Session

HOUSE BILL NO. 176

BY REPRESENTATIVE JEFFERSON

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROPERTY: Provides relative to transfer of ownership of movable property

1 AN ACT

2 To enact Civil Code Article 520 and to repeal Civil Code Article 525, relative to transfer
3 of ownership of movable property; to provide for transfer of ownership by
4 merchants; to provide for the effect of various provisions of the Civil Code; and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Article 520 is hereby enacted to read as follows:

8 Art. 520. Transfer of ownership by merchant

9 Except as otherwise provided by legislation, a transferee in good faith and for
10 fair value acquires ownership of a corporeal movable from a transferor who is not
11 the owner only if the transferor has possession of the thing with consent of the
12 owner, is a merchant customarily selling similar things, and transfers the thing in the
13 regular course of the transferor's business.

14 Revision Comments - 2023

15 (a) This provision is new. It sets forth a limited exception to the rule that the
16 transfer of a thing of another does not convey ownership. See Article 2452. It does
17 so by formulating a rule that is consistent with the doctrine of entrustment found in
18 the Uniform Commercial Code. See U.C.C. Sections 2-403(2) and 2A-305(2). The
19 rule formulated by this Article is also consistent with the French doctrine of *la*
20 *possession vaut titre*, but only as applied to certain transfers. See French Civil Code
21 Article 2276. The purpose of this Article is to protect a good faith purchaser for
22 value who acquires a movable from a transferor who has possession of the thing with
23 the owner's consent, but only when the transferor is a merchant customarily selling
24 similar things and the transfer is in the regular course of the transferor's business.

1 (b) The protection that this Article affords to a transferee of a movable in
2 good faith, for fair value, and in the regular course of business is similar to the
3 protections afforded to a "buyer in the ordinary course of business" as that term is
4 used in the Uniform Commercial Code. See R.S. 10:1-201(b)(9); U.C.C. Sections
5 1-201(b)(9) and 2A-103(1)(a). Under that definition, neither a dation en paiement
6 nor a transfer in bulk is a sale to a buyer in the ordinary course of business.
7 Similarly, under this Article, neither a dation en paiement nor a transfer in bulk is a
8 sale in the regular course of the transferor's business.

9 (c) Louisiana courts have, in the past, occasionally applied the doctrine of
10 equitable estoppel to bar an owner's action for revendication against a good faith
11 purchaser of a movable who purchased it from a person to whom the owner
12 voluntarily delivered possession. According to that jurisprudence, the owner who
13 clothes the possessor with every possible indicium of ownership must bear the loss
14 when the possessor transfers the thing to a good faith purchaser. *Theriac v.*
15 *McKeever*, 405 So. 2d 354 (La. App. 2 Cir. 1981); *James v. Judice*, 140 So. 2d 169
16 (La. App. 3 Cir. 1962); *Flatte v. Nichols*, 96 So. 2d 477 (La. 1957); *William Frantz*
17 *& Co. v. Fink*, 52 So. 131 (La. 1909). While the courts' use of the doctrine of
18 equitable estoppel is in line with the Uniform Commercial Code's entrustment
19 doctrine and the French principle of *la possession vaut titre*, the approach formulated
20 by this Article is more predictable than the prior jurisprudence. This Article
21 displaces the doctrine of equitable estoppel in this context by declaring that, except
22 as otherwise provided by legislation, one who has possession of a corporeal movable
23 with the owner's consent may transfer its ownership to another only if the
24 requirements of this Article are met.

25 (d) The requirement that the transferor have possession with the owner's
26 consent negates the application of this Article to lost or stolen things. The owner's
27 right to recover lost or stolen things from a possessor is governed by Articles 521
28 and 524.

29 (e) In the absence of a rule like the one set forth in this Article, Louisiana
30 courts have erroneously applied Article 524, which by its very terms applies only to
31 lost or stolen movables, to the transfer of a movable by a person who has possession
32 of the thing with the owner's consent. See *Livestock Producers, Inc. v. Littleton*, 748
33 So. 2d 537 (La. App. 2 Cir. 1999); *Louisiana Lift & Equipment, Inc. v. Eizel*, 770
34 So. 2d 859 (La. App. 2 Cir. 2000). Unless otherwise provided by legislation, if the
35 requirements of this Article are not satisfied, the transfer of a corporeal movable by
36 a person who has possession of it with the owner's consent does not transfer
37 ownership, and the owner may recover the movable from the transferee without
38 reimbursing the purchase price, even if the transferee is in good faith.

39 (f) This Article does not affect the law of mandate. Quite apart from this
40 provision, a mandatary in possession of a corporeal movable belonging to the
41 principal may have actual or apparent authority to transfer its ownership to another.

42 Section 2. Civil Code Article 525 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 176 Original

2023 Regular Session

Jefferson

Abstract: Provides relative to transfer of ownership of movable property.

Proposed law (C.C. Art. 520) provides for the transfer of ownership of movable property from a transferee who is not the owner of the property in certain limited circumstances.

Present law (C.C. Art. 525) provides for the inapplicability of certain Civil Code provisions to movables required to be registered in public records.

Proposed law repeals present law.

(Adds C.C. Art. 520; Repeals C.C. Art. 525)