LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

January 23, 2026

Friday, January 23, 2026

Persons Present:

Adams, Marguerite "Peggy" L.
Amacker, Dawn
Anderson, Logan
Austin, Ashton P.
Bond, Harrison A.
Borel, Danielle L.
Bromley, Kris T.
Crigler, James C., Jr.
Crochet, Anne J.
Daniels, Timothy F.
Darensburg, June Berry
Davrados, Nikolaos A.
Diez, Madison "Maddie" L.
Fielding, Semaj M.
Flemings-Davillier, Tracey
Forrester, William R., Jr.
Frederic, Melanie A.
Gulotta, James
Hamilton, Leo C.
Hawthorne, George "Trippe"
Hayes, Thomas M., III
Holdridge, Guy
Holthaus, C. Frank
Jewell, John Wayne
Kunkel, Nick
Kutcher, Robert A.
Lee, Amy Allums
Lonegrass, Melissa T.
Manning, C. Wendell
McCallum, Jay B.
Norman, Rick J.
Ottinger, Patrick S.
Payer, Julie Baxter
Pettigrew, Landon C.
Philips, Harry "Skip", Jr.
Price, Donald W.
Rector, Aubrey D.
Richardson, Sally Brown
Riviere, Christopher H.
Saloom, Douglas J.
Schlegel, Laurie
Simoneaux, Ryan P.
Smith, Mary Watson
Sossamon, Meera U.
Stuckey, James A.
Swensek, Adam J.
Talley, Susan G.
Tate, George J.
Theus, Susannah "Suze" F.
Thibaut, Martha A.
Thibeaux, Robert P.
Thomas, David Abboud
Ventulan, Josef
Viator, James Etienne
Waller, Mallory C.
Weems, Charles S., III
Ziober, John David

President Leo C. Hamilton called the second January Council meeting to order at 10:00 a.m. on Friday, January 23, 2026 at the Lod Cook Alumni Center in Baton Rouge. After asking Council members to briefly introduce themselves, the President called on the Law Institute's Director and Reporter of the Code of Civil Procedure Committee, Judge Guy Holdridge, to begin his presentation of materials.

Code of Civil Procedure Committee

Judge Holdridge began his presentation by directing the Council's attention to the report in response to House Resolution No. 149 of the 2025 Regular Session, which directs the Law Institute to conduct data collection concerning justice of the peace and city courts. Though the Committee initially sought to create a Justice of the Peace Subcommittee and prepare a comprehensive report, subsequent discussion with the author of the resolution indicated that those efforts were not needed at this time. As a result, the report provides an overview of the statutory authorities and jurisdictional limits of justice of the peace courts. Judge Holdridge explained that the Committee found that while justice of the peace courts provide cost-effective avenues of litigation, their powers are duplicative of district, parish, and city courts. Moreover, because justice of the peace courts are permitted to deviate from traditional procedural and evidentiary rules, the Committee determined that the establishment of procedures setting forth that certain contested matters be tried only by city, parish, or city courts – consistent with the Code of Evidence and Code of Civil Procedure – may warrant further study.

Beginning discussion, one Council member suggested that the Committee study whether it would be appropriate for certain contested matters to be transferred to the small claims division of a city or district court. Judge Holdridge then clarified that any future study would contemplate that the matter be heard by the court to which the matter would have been appealed under current law. Another Council member asserted that duplicative jurisdictions may lead to incongruous results, thus the Committee should also consider suggesting remedial action at this time. It was then raised that the nature of the warrant that a justice of the peace may issue is broad – for example, it is currently possible that a warrant may be issued for attempted murder, though the actual offense is a form of assault, and the accused may languish in jail due to a justice's misinterpretation of the law. Acknowledging the various practical issues, Judge Holdridge indicated that these matters would be addressed should the legislature request that the Law Institute further study and make recommendations. After brief discussion, the Council adopted the report.

Next, Judge Holdridge introduced proposed changes to Article 1426. He stated that although motions to quash are recognized in Louisiana as a valid procedural mechanism, motions to quash are not mentioned in the Code of Civil Procedure. Accordingly, the proposed revision would incorporate motions to quash in the Code and provide for the applicability of a protective order or motion to quash with respect to the issuance of a subpoena. After brief discussion, the Council adopted the proposed language as follows:

Article 1426. Protective orders; motions to quash

A. Upon motion by a party or by the person from whom discovery is sought or to whom a subpoena is issued, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition or subpoena, the court in the district where the deposition is to be taken or from which the subpoena is issued may make any order ~~which~~ that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

* * *

B. If the motion for a protective order or a motion to quash is denied in whole or in part, the court may, on ~~such~~ terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Article 1469 apply to the award of expenses incurred in relation to the motion.

C. No provision of this Article authorizes a court to issue a protective order or grant a motion to quash preventing or limiting discovery or ordering records sealed if the information or material sought to be protected relates to a public hazard or relates to information which may be useful to members of the public in protecting themselves from injury that might result from such public hazard, unless such information or material sought to be protected is a trade secret or other confidential research, development, or commercial information.

* * *

Judge Holdridge then directed the Council's attention to Article 1572, explaining that practitioners regularly include a written request for notice of trial when filing an action. The Committee, however, found that clerks of court typically send written notice of the trial date to all parties regardless of whether a written request was submitted. As a result, the Committee proposed removing the requirement that in order to receive notice of trial, a party submit a request to the clerk of court. Judge Holdridge further noted that the proposed language would permit the clerk of court to send notice via electronic means. One Council member then expressed concern regarding the ability of a party or the party's attorney to waive notice of trial at a pretrial or scheduling conference. He asserted that those conferences often occur prematurely, often resulting with no conclusive trial setting

– thus, it may be problematic that parties risk waiving notice of an indeterminate trial date. Though Judge Holdridge pointed out that this language is existing law, it was suggested that the Council consider removing the ability of a party to waive notice of trial. Council members, however, expressed that the ability to waive notice of trial is essential and lends to judicial efficiency – notice is often waived to expedite litigation.

Another Council member suggested that the parties or their attorneys be given the ability to waive at any time after a trial date is fixed so long as the waiver is in writing or on the record. A concern was then raised regarding whether waiver of notice applied to all trials – for example, if a trial date were continued or if a trial required several days to reach resolution – or is limited to a particular trial. One Council member then contended that the law should not be so specific and attempt to provide for every scenario that may arise. He asserted that the original suggestion, that the provisions of the Article may be waived in writing or on the record by the parties or their attorneys, was sufficient, offering guardrails to the parties or their attorneys who should make clear in the writing or on the record the scope of the waiver. Members of the Council were amenable to that suggestion and further granted the Reporter authority to draft a Comment explaining the changes. After additional discussion regarding semantic changes, which were accepted by the Reporter, the Council adopted the proposed language as follows:

Article 1572. ~~Written request for notice~~ Notice of trial

The clerk shall give written notice of the date of the trial ~~whenever a written request therefor is filed in the record or is made by registered mail by a party or~~ to all counsel of record, or if there is no counsel of record, to a self-represented litigant. This notice shall be sent in accordance with Article 1313(A)(4) or mailed by the clerk, by certified mail, properly stamped and addressed, at least ten days before the date fixed for the trial. The provisions of this ~~article~~ Article may be waived in writing or on the record by ~~all counsel of record~~ the parties or their attorneys ~~at a pre-trial conference~~.

Next, Judge Holdridge began his presentation of Article 1425. He indicated that the Committee proposed repealing Article 1425(F)(5), thus clarifying that a ruling of the court pursuant to a hearing held in accordance with Article 1425(F), colloquially known as a *Daubert* hearing, is an interlocutory order and therefore not appealable in accordance with Article 2083. Judge Holdridge further stated that the use of "appellate review" within the Code of Civil Procedure has caused confusion as the phrase may contemplate either an appeal or a supervisory writ, and thus the Committee plans to review articles utilizing "appellate review" in order to make clear the appropriate procedural mechanism. Judge Holdridge also stated that this distinction is important within the context of a *Daubert* hearing as an interpretation that contemplates "appellate review" to mean an appeal could impose excessive delays upon litigation. He also directed the Council to the Comments, which explain the reasons for the repeal of Article 1425(F)(5), and after further brief discussion, the Council adopted the repeal of Article 1425(F)(5) and the Comment as follows:

Article 1425. Experts; pretrial disclosures; scope of discovery

* * *

Comments – 2026

The deletion of Subparagraph (F)(5) is intended to clarify that a ruling allowing or excluding an expert or an expert's report due to the expert's lack of qualifications or use of unreliable methodologies is an interlocutory order that is not appealable in accordance with Article 2083.

Judge Holdridge then directed the Council's attention to Article 1841. He explained that the proposal seeks to clarify the law and align Article 1841 with 1915, then reminded the Council of the considerations underlying recent changes to Article 1915. One Council member expressed concern that new Paragraph C defining interlocutory judgment may cause confusion since "interlocutory" may also apply to judgments rendered pursuant to

Paragraph A and Subparagraph (B)(2). Judge Holdridge then explained that the uses of "interlocutory" are distinguishable: Subparagraph (B)(2) describes interlocutory judgments rendered in accordance with Article 1915(C) – though no appeal is afforded, such judgment may determine the merits in part – while Paragraph C contemplates interlocutory judgments that determine only preliminary matters. One Council member then questioned whether this created inconsistency with respect to the use of "final judgment" rather than "partial final judgment" in Article 1915(A). Judge Holdridge indicated that the Committee previously discussed that matter when suggesting changes to Article 1915 and determined that the use of "partial" was unnecessary but that he was not opposed to revisiting that discussion at a future Committee meeting. The Council subsequently adopted the proposed language as follows:

Article 1841. Judgments, interlocutory and final

A. A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled. It may be interlocutory or final.

B(1). ~~A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment~~ A judgment that determines the merits in whole is a final judgment.

(2) A judgment that determines the merits ~~in whole or~~ in part ~~is~~ may be a partial final judgment in accordance with Article 1915(A) or an interlocutory judgment in accordance with Article 1915(C).

C. A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment.

Comments – 2026

This amendment seeks to clarify the law. Article 1915(A) provides for partial final judgments that are appealable. Article 1915(C) provides for partial judgments that are interlocutory judgments. Article 2083(C) provides that a partial final judgment and an interlocutory judgment are appealable only when expressly provided by law.

Next, Judge Holdridge began his presentation of proposed changes to Article 2083. He indicated that these changes are the companion to those in Article 1841 providing that a partial final judgment and an interlocutory judgment are appealable only when expressly provided by law – for example, appeals resulting from the certification or denial of a class action and preliminary injunctions in accordance with Articles 591 and 3612, respectively. The Council then discussed historical context relative to provisions of law expressly providing for the appealability of certain interlocutory judgments. One Council member suggested that examples of appealable partial final judgments be included in the Comments to Article 2083, and the Council subsequently adopted the proposed language as follows:

Article 2083. Judgments appealable

* * *

C. A partial final judgment and ~~An~~ an interlocutory judgment ~~is~~ are appealable only when expressly provided by law.

Comments – 2026

The amendment to Paragraph C of this Article clarifies the law and is consistent with the amendments to Article 1841. See also, Articles 592(A)(3)(c) and 3612 providing for interlocutory orders and judgments from which an appeal may be taken as a matter of right.

The Council's attention was then directed to Article 1914. Judge Holdridge indicated that the suggested language clarifies that the article's use of "interlocutory injunctive order or judgment" contemplates the certification or denial of a class action in accordance with Article 592(A)(3)(c) or appealable orders or judgments granting or denying a preliminary injunction in accordance with Article 3612. He explained that the proposal makes clear that the notice requirements of Article 1914 are inapplicable to those orders and judgments – rather, the provisions of Article 1913 should be applied. Judge Holdridge went on to assert that this distinction is important since failure to provide proper notice may prevent the commencement of certain appeal delays. Members then discussed consequences regarding the appeal of a preliminary injunction and the absence of a stay order. After brief additional discussion, the Council adopted the proposed language as follows:

Article 1914. Interlocutory judgments; notice; delay for further action

* * *

E. The provisions of this Article do not apply to ~~an interlocutory injunctive order or judgment~~ the certification or denial of a certification of a class action in accordance with Article 592(A)(3)(c) or appealable orders or judgments granting or denying a preliminary injunction in accordance with Article 3612.

Comments – 2026

This amendment clarifies the law. Articles 592(A)(3)(c) and 3612 provide for interlocutory orders and judgments from which an appeal may be taken as a matter of right. Thus, the notice requirements set forth in this Article are not applicable. Rather, the required notice should satisfy the provisions of Article 1913. This is consistent with Article 2083 providing that an interlocutory judgment is appealable only when expressly provided by law.

Judge Holdridge then introduced proposed changes to Article 4922. He indicated that the proposal does not change the law and only makes the provision consistent with recent changes to Article 1913. He further indicated the various justices of the peace took no issue with the proposal. After little discussion, the Council adopted the proposed language as follows:

Article 4922. Notice of judgment; justice of the peace courts; district courts with concurrent jurisdiction

Notice of the signing of any final judgment shall be given ~~as required by~~ in accordance with Article 1913~~, except that if the party is personally served with the judgment in open court, no further notice shall be required~~.

Comments – 2026

This amendment does not change the law. Article 1913 was previously amended to provide that delivery of the signed judgment in open court shall constitute notice of judgment and shall be documented in the record of the proceeding.

Next, Judge Holdridge introduced changes to Articles 2126 and 2128 by indicating that the articles provide for the procedures and payment of costs relative to the designation of the record on appeal. He explained that an entire record is often unnecessary – for example, for an appeal of summary judgment – thus, in an effort to reduce excessive costs, parties will designate only pertinent parts of the record for the appellate court's review. The Committee, however, identified several issues with this procedure, including the time allotted to the parties to designate the record, the required notice, and the applicable legal delays.

Proceeding with Article 2126, Judge Holdridge explained that the new Paragraph B permits the clerk of court to send revised notices of estimated costs by certified mail to the appellant and by first class mail to the appellee. One Council member then questioned whether the twenty days of the mailing of notice on line 10 of the materials referred to the initial mailing of notice or the revised notice. Judge Holdridge indicated that due to the inclusion of the new Paragraph B, it referred to the revised mailing of notice in accordance with a designation of the record pursuant to Article 2128. Another Council member, however, asserted that a designation of the record may not always be necessary, and thus the proposal may cause confusion relative to legal delays depending on whether a designation is made pursuant to Article 2128. Moreover, if the twenty-day delay applies only to the revised notice, the absence of designation may prevent the sending of notice to pay the amount of estimated costs to the clerk. Noting the Council's concerns, Judge Holdridge agreed to recommit Articles 2126 and 2128 and return to the Council with clarification as to the designation and sending of notice.

The Council's attention was then directed to R.S. 13:319 relative to the assignment and allotment of cases. Judge Holdridge indicated that the proposal seeks to increase judicial efficiency and prevent duplicative adjudication of identical issues involving the same facts derived from the same action. He explained that current law mandates that appeals and writs be randomly assigned. This framework, however, has been identified as judicially inefficient, making it possible for multiple hearings of identical arguments before different panels, thus requiring parties to attend identical oral arguments on different days and before different judges. The proposal would provide for the return of past practices and permit appellate courts to assign writs and appeals from contemporaneously rendered orders or judgments of the same action from a lower court to the same panel to which the first writ or appeal was assigned. Judge Holdridge then noted that the Comments define "contemporaneously."

Beginning discussion, one Council member expressed concern that the phrase "to which the first writ or appeal was assigned" could be construed to mean a prior panel from a prior writ or appeal and suggested that removal of the phrase would clarify the intent of the proposal. Another Council member questioned whether same-panel assignment hinged upon the date on which the motions were decided – for example, motions for summary judgment filed by different defendants, at different times, on the same issues may be randomly assigned to different panels merely because the lower court ruled on the motions at different times. The Council then discussed commonly used, previous assignment frameworks – assigning all subsequent appellate review of the same action from a lower court to the initial panel – and it was suggested that the appellate court be given the ability to consolidate matters. Judge Holdridge noted that the concept of appellate consolidation was explored by the Committee and later rejected. He noted that the Committee also entertained repealing the rule entirely but that this suggestion received much opposition. The Council proceeded to discuss whether a mechanism for consolidation would be more appropriate but ultimately declined to deviate from the Committee's proposal. The Reporter, however, did accept the Council's suggestion that consolidated cases from a lower court be expressly mentioned in the language of the proposal. After brief discussion regarding the exact language of the amendment, the Council adopted the proposed language as follows:

R.S. 13:319. Assignment and allotment of cases

Each civil and criminal appeal and each application for writs shall be randomly assigned by the clerk, subject to the direct supervision of the court. Except for good cause shown, all writs and appeals from contemporaneously rendered orders or judgments from a lower court in the same action or consolidated cases shall be heard by the same randomly assigned panel.

Comments – 2026

This amendment permits the clerk of the court of appeal to assign writs and appeals in accordance with procedures that were commonly used

prior to the 2018 amendment of this Section, thus preventing duplicative adjudication of identical issues derived from the same action. See also, Code of Civil Procedure Article 2164.1.

Judge Holdridge then directed the Council's attention to R.S. 13:5206. He explained that in addition to semantic changes, the proposed revision would increase the jurisdictional limit of a defendant's reconventional demand in a small claims action from three thousand to five thousand dollars. This is consistent with R.S. 13:5202 providing that a small claims division shall have civil subject matter jurisdiction in cases where the amount in dispute does not exceed five thousand dollars. After a brief discussion, the Council adopted the proposed language as follows:

R.S. 13:5206. Reconventional demand beyond jurisdiction; filing in court of competent jurisdiction; transfer of proceedings from small claims division

A. If a defendant in a small claims action shall have a claim against the plaintiff in ~~such~~ the action for an amount over the jurisdiction of the small claims division as set forth in R.S. 13:5202(A), but of a nature ~~which~~ that may be asserted by a reconventional demand as authorized by Code of Civil Procedure Article 1061 ~~of the Louisiana Code of Civil Procedure~~, the defendant may assert ~~his~~ a claim in the manner provided by this Section, in order to secure consolidation for trial of the small claims action with ~~his~~ the defendant's own claim.

B. At any time prior to trial in the small claims action, the defendant therein may commence an action against the plaintiff in a court of competent jurisdiction to assert a claim of the nature set forth by ~~R.S. 13:5206(A)~~ Subsection A of this Section, and file an affidavit that the reconventional demand is in excess of ~~three~~ five thousand dollars with the judge of the small claims division in which the plaintiff has commenced the small claims action.

C. The defendant shall attach to the affidavit a true copy of ~~his~~ the defendant's petition or reconventional demand so filed and shall pay the clerk of the small claims division a transmittal fee of ten dollars, in addition to the prescribed court costs for filing the reconventional demand, furnishing a copy of the affidavit and pleading to the plaintiff.

D. The judge of the small claims division shall order that the small claims division action be transferred to the ordinary docket of the court set forth in ~~said~~ the affidavit~~,~~ and ~~he~~ shall transmit to ~~such~~ that court (if it is other than the court of the small claims division) copies of the citation and any pleadings in the small claims action, and the actions shall then be consolidated for trial in ~~such~~ the other docket or court.

E. The plaintiff in the small claims action shall not be required to pay to the clerk of the court to which the action is so transferred any transmittal, appearance, or filing fee; although, upon adverse judgment, ~~he~~ the plaintiff may be taxed with costs as in the case of any other defendant.

Next, Judge Holdridge began his presentation of Article 561 relative to abandonment. Providing context for the Council, he explained that abandonment, while a commonly used procedural mechanism, is somewhat of an abstract concept. Though much jurisprudence has developed regarding abandonment, the exact nature of actions causing abandonment remains unclear. Equally unclear are the jurisprudential rules regarding waiver or renunciation of the defense of abandonment, and these various issues have perplexed plaintiffs and defendants alike. Accordingly, the Code of Civil Procedure Committee sought to revise and codify jurisprudential customs regarding abandonment to provide consistency and predictability for those proceedings. Judge Holdridge further indicated that, during the course of its research, the Committee explored

several options. He then asked that the Council consider these options and advise the Committee as to which option is most appropriate for further refinement.

Judge Holdridge indicated that the first option suggests that no changes be made to the current article. He then stated that option two, in addition to reorganizing the article, primarily serves to codify jurisprudence setting forth that a step in the prosecution or defense of an action shall interrupt the abandonment period, and that after the three-year abandonment period has expired, the defendant may waive or renounce the defense of abandonment. Option two also sets forth requirements relative to the required affidavit. Option three, similar to option two, incorporates a more detailed affidavit and requires that the affidavit include a list of any pleadings, documents, or judgments that have been filed in the record during the three years preceding the expiration of the abandonment period and any written communication between the parties or their attorneys in the one year preceding the expiration of the abandonment period. Option three also grants the court discretion to set for contradictory hearing the motion to dismiss based on abandonment if the court determines based on the affidavit and attached documents that a hearing is necessary to ascertain whether an action is truly abandoned. Option four seeks to create exclusive lists defining what conduct constitutes a step in the prosecution or defense of an action and mandates that the court sign the judgment of dismissal if all requirements are satisfied.

Beginning discussion, members of the Council expressed favor toward enhanced requirements relative to the necessary affidavit. Members were also amenable to granting judicial discretion permitting courts to set the motion to dismiss based on abandonment for contradictory hearing. It was suggested that the Committee combine these two options. One Council member then asked whether the creation of exclusive lists would overrule previous jurisprudence. Judge Holdridge answered affirmatively and asserted that such an amendment would serve to change the results of previous decisions if those decisions deviated from the list. Council members further suggested that the term "waiver" be removed from subsequent iterations as "renunciation" is the more correct term relative to the defense of abandonment. One Council member then questioned whether a provision requiring that all written communications between the parties be attached to the affidavit was overly broad. Judge Holdridge explained that the Committee was hesitant to permit attorneys to filter communications, and that the court should have the ability to decide for itself whether a particular communication is irrelevant.

The Council then discussed option four and the necessity of promulgating lists of steps in the prosecution or defense of an action and conduct that constitutes renunciation of the defense of abandonment. Many members expressed that such lists would be helpful and clearly demarcate whether a certain action interrupts the abandonment period. Other members, however, expressed that the creation of lists would usurp discretion from the court. Judge Holdridge subsequently indicated that the time needed to fully research and create these lists would stall the amendment of Article 561 to a later legislative session. It was then suggested that the Council pursue a combination of options two and three and revisit the creation of exclusive lists later. Ultimately, the Council voted to task the Code of Civil Procedure Committee with combining options two and three, in furtherance of refining the required affidavit and granting the court discretion as to whether a motion to dismiss based on abandonment should be set for contradictory hearing. The Council further voted to revisit creating exclusive grounds for abandonment at a later time.

At this time, Judge Holdridge concluded his presentation, and the Council adjourned for lunch.

Lease of Movables Act Committee

After lunch, the President called on Mr. Robert P. Thibeaux, Reporter of the Lease of Movables Act Committee, to begin that Committee's presentation. Mr. Thibeaux informed the Council that the Committee was proposing the adoption of Civil Code revisions and enactments addressing an area of law that had never been explicitly treated by the Civil Code—namely, the effects of leases of movables against third persons. He explained that the Committee's two primary objectives in formulating these proposals were fidelity to the consensus positions of civilian jurisdictions around the world and

functional consistency with the substance of UCC Article 2A, which he noted dealt with equipment leasing and had been adopted by all 49 other states. Mr. Thibeaux clarified that these materials did not represent the Committee's final conclusion of its legislative directive but rather a discrete segment of the project that both (1) would serve as foundational substance for future work; and (2) was susceptible of being enacted as its own piece of legislation. Lastly, he added that the proposed articles reflected the Committee's substantive decision to make delivery the operative event for effects against third persons—an approach that differed from that employed by the other 49 states but which Mr. Thibeaux emphasized was sound in terms of both maintaining substantive consistency with current Louisiana property law and achieving results analogous to those under Article 2A. Under this construction, he concluded, delivery was treated as putting third persons on notice of the lease. With this, he noted that Professor Missy Lonegrass had taken the lead on drafting the proposed articles and ceded the floor accordingly.

Professor Lonegrass thanked the Reporter and began her presentation by giving the Council a bit of additional context. In particular, she noted that the Committee's primary charge was to review Louisiana law regarding the lease of movables—particularly the Louisiana Lease of Movables Act—with an eye towards modernizing Louisiana's approach and where possible incorporating the principles of Article 2A. She explained, though, that the nature and structure of Article 2A were such that these principles could not simply be "dumped" into either the Louisiana UCC or the Revised Statutes; thus, the Committee had approached the task in a manner consistent with Louisiana's civilian methodology and tradition, beginning with Civil Code enactments. She concluded this preamble by promising to inform the Council of places where the proposals diverged from principles of current Louisiana law.

Turning to the substance of the proposals, Professor Lonegrass reiterated the Reporter's comments that the articles being presented dealt with the effects of leases against third persons. She explained that, whereas Article 2A contained a complex and comprehensive scheme detailing these effects, Louisiana law had traditionally been understood as providing for no effects against third persons, in light of the strictly personal nature of leases in the civilian tradition. Consistent with this notion, she explained that the Committee's initial inclination was indeed that leases had no effect against third persons and therefore that there was little for the Committee to do in this regard; however, research into the approaches taken by other modern civilian jurisdictions revealed that nowadays the law of almost every civilian jurisdiction contemplated some degree of effects against third persons. Moreover, Professor Lonegrass stated that a strong argument existed that Louisiana law actually *had* already contemplated that a lease of movable property would have effect against third persons. In any case, she explained that the results of the Committee's research made the general concept more palatable to the Committee, and, as such, it had attempted to incorporate relevant principles from both the UCC and civilian jurisdictions into Louisiana law by way of its proposals.

Beginning with proposed Article 2674, Professor Lonegrass explained that this article governed the effects of leases of goods against a specific third person—namely, the owner of the leased thing where the owner was not also the lessor. In other words, this provision dealt with situations where a party other than the owner had possession of the goods and leased them to a lessee without or beyond authority; Professor Lonegrass clarified that this last point meant the article did not govern scenarios involving questions of mandate or apparent authority. She posited that one's default assumption might be that a lease of the sort she described would have no effect against the owner of the goods, because the possessor-lessor would have no power to make the lease enforceable. While true as a matter of background law, she explained that two years ago, the Committee had proposed the enactment of current Article 520, which incorporated the UCC doctrine of "entrustment" into Louisiana property law generally and, more specifically, into Louisiana's bona fide purchaser doctrine. Under Article 520, Professor Lonegrass continued, someone entrusted with goods was afforded the power to *sell*—that is, transfer ownership of—the goods in certain cases; therefore, the possessor in such scenarios should *a fortiori* have the power to *lease* the goods, lease being in this construction the "transfer" of lesser rights. She added that this principle was also consistent with both Articles 2 and 2A of the national UCC. Summarizing, she explained that present law provides for the enforceability of a lease of a thing not belonging to the purported lessor

between the parties, while proposed Article 2674 would provide for circumstances in which such a lease would also be enforceable against the owner of the goods, such that the owner would be unable to evict the lessee.

A motion was then made and seconded to adopt Article 2674. Before opening the floor to discussion, the Reporter emphasized that the present article was a matter of commercial importance to the equipment-leasing industry, which he informed the Council sought a clear expression of the circumstances under which a lease beyond authority would be effective against the owner of the goods. One Council member requested that either the Reporter or Professor Lonegrass give an example of how the article might typically work. Professor Lonegrass pointed to a scenario in which the owner has leased the goods to a lessee, after which the lessee leases the goods to a sublessee beyond the term of the prime lease; she explained that proposed Article 2674 was essentially intended to address any lease by the relevant person that exceeded the person's authority to lease the goods. She further explained that, in a subsequent article, the general rule—that a lessee cannot confer lease rights greater than their own rights under the prime lease—was made explicit, adding that Article 2674, notwithstanding its appearance before the aforementioned provision, would represent an exception to this general rule. She clarified that the present article appeared first because it addressed a broader set of circumstances—that is, not merely the ability of a lessee to lease beyond their authority but rather the ability of *any* entrustee to lease beyond their authority.

Another question was then posed, this one in relation to a hypothetical prime lease that prohibited sublease under any circumstances. In particular, the member asked whether—in light of proposed Article 2674—the owner would still be entitled to consider the lease beyond authority an event of default under the prime lease, and whether the owner would be entitled to evict the sublessee in possession. Professor Lonegrass answered that the lease beyond authority could still be treated as an event of default, such that the owner could recover damages or other remedies against the faulty party; she explained, however, that the owner would be bound in such case to allow the sublessee to remain in possession. A member of both the Committee and the Council then added further clarification, highlighting as another scenario in which Article 2674 might apply one where the owner left the goods with a repairperson, who then leased them from its storefront; in such case, the member stated that the lessee would be protected during the period of the lease. Professor Lonegrass affirmed this explanation and added that nothing in such case would foreclose the availability to the lessor of a contractual remedy other than repossession. She explained that the article reflected a balancing of interests between security of transaction and the protection of property rights, emphasizing that the article's "preference" for security of transaction was a policy that had already been confirmed in Louisiana in related circumstances and was the law in the rest of the country in the present circumstances. Another member of both the Committee and Council reiterated that the greater power—to transfer ownership—had already been granted in these circumstances, so it would be a strange choice not to follow suit with respect to leasing. Professor Lonegrass then made one final clarifying remark, noting that more granular rules aimed at specialized scenarios would be set forth in the Committee's eventual LMA draft, with the present provisions representing merely the general rules that would serve as the foundation for the statutory law.

The Council then returned to the motion to adopt Article 2674. One Council member suggested that "2713.2" on lines 27 and 186 be changed to "2713.1", which Professor Lonegrass accepted as a friendly amendment. Before a vote was taken, a Council member posed one final question in regards to a sublease exceeding the term of the prime lease, using as an example a prime lease expiring December 31, with a purported sublease extending through the following June. In particular, the Council member inquired how such a sublease could ever be entered into in good faith, in response to which Professor Lonegrass clarified that the requirement of good faith applied to the lessee, rather than the lessor. With no further questions or commentary, the article was adopted with all in favor to read as follows:

Article 2674. Ownership of the thing

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

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

Revision Comments – 2026

(a) The second paragraph of this Article is new. It articulates a rule that aligns with the principles set forth in Article 520 and with the doctrine of entrustment found in the Uniform Commercial Code. See U.C.C. §§ 2-403 and 2A-305(2). Under Article 520, a merchant in possession of a corporeal movable with the owner's consent may transfer ownership of the movable in the regular course of business to a transferee who is in good faith and pays fair value. That provision is designed to protect the rights of persons who reasonably and honestly believe that the person with whom they are dealing has the power to transfer the movable. In the same vein, this Article protects a lessee who leases from someone who he reasonably and honestly believes has the power to lease the movable. For example, if the owner of a corporeal movable places it in the possession of a repairperson who also customarily sells or leases things of the same kind, and the repairperson leases the thing during the regular course of its business to a lessee in good faith and for fair value, the lease has effect against the owner of the thing. Similarly, this Article protects a sublessee of a merchant who subleases a corporeal movable beyond the terms of the prime lease, provided the sublease is executed in the regular course of the merchant's business to a sublessee in good faith and for fair value. In this way, this Article operates as an exception to the general limitation on the rights of sublessees stated in Article 2713.1 and is consistent with U.C.C. Section 2A-305(2).

(b) The term possession, as used in this Article and in Article 520, refers to precarious possession. See Article 3437. The precarious possessor does not have possession; instead, the precarious possessor or detainer merely exercises factual authority over the thing with the permission of or on behalf of another. A.N. YIANNOPOULOS & RONALD J. SCALISE JR., LOUISIANA CIVIL LAW TREATISE: PROPERTY §12:20.

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

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

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

Professor Lonegrass turned next to proposed Article 2681. Here, she highlighted the fact that all but two of the proposed articles were mere clarifications of existing law, or instances where implicit rules were made explicit, adding that the Council had already approved one of the two that made actual substantive changes. By contrast, she identified the present article as merely clarificatory. She explained that the Committee had found it difficult to find an appropriate location for the article addressing effects against third persons, as only one current article was germane to the topic—Article 2681, which was notably titled "Form" and dealt only with effects of leases of immovables. Accordingly, Professor Lonegrass continued, the Committee had elected to take the rule for effects against third persons and move it elsewhere, so as to create a more logical organization overall. The proposed revisions to Article 2681 were part of this reorganization. A motion to adopt the changes was made, seconded, and ultimately carried with all in favor. Article 2681 was adopted as follows:

Article 2681. Form

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

Moving to proposed Article 2681.1, Professor Lonegrass again identified this article as one not intended to make any substantive changes to the law. She clarified that this was simply the new location for the rule previously set forth in Article 2681. A motion was made and seconded to adopt proposed Article 2681.1 with the proposed Comment, and the motion passed with all in favor. Article 2681.1 was adopted as follows:

SECTION 5—EFFECTS AGAINST THIRD PERSONS

Article 2681.1. Lease of an immovable

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

Revision Comment – 2026

This revision does not change the law. In the civil law tradition, a lease is a contract which imposes personal obligations upon the lessor and the lessee but by which no real rights are created. A.N. Yiannopoulos & Ronald J. Scalise Jr., Louisiana Civil Law Treatise: Property §9:26. Absent special legislation to the contrary, a lease has no effect against one who is not a party to or bound by the lease. Id. With respect to immovables, Louisiana legislation and jurisprudence have long provided that a lease of an immovable has effect against third persons once it is filed for registry in the conveyance records of the parish where the immovable is located. See R.S. 9:2721(A) (repealed); Articles 3338 and 3346; Summers v. Clark, 30 La. Ann. 436 (La. 1878); Tate v. Fakouri, 118 So. 2d 464 (La. App. 1 Cir. 1959); Avenue Plaza, L.L.C. v. Falgoust, 654 So. 2d 838 (La. App. 4 Cir. 1995).

Professor Lonegrass then turned to Article 2681.2, pointing to this article as the second of the two articles effecting substantive changes to the law. In particular, she characterized proposed Article 2681.2 as providing for leases of corporeal movables to have effects against third persons. She listed the various third persons such a lease would effect: a subsequent lessee from a double-dealing lessor, the transferee of goods subject to a lease where a lessor leased goods then sold them to a third party, and creditors of both parties. Professor Lonegrass further noted that the Committee would present

additional, more detailed creditors' rules the following year, thus asking the Council not to concern itself too much with potential exceptions and granular details, as these matters would be addressed via subsequent legislation. She then summarized the basic rule of Article 2681.2, emphasizing that the Committee's research showed that essentially every other civilian jurisdiction had a comparable provision. She further clarified that the Committee's approach in Article 2681.2—which gave the lease effects against third persons upon delivery, and thus differed from the UCC general rule that such effects begin upon the execution of the lease—was intentionally consistent with the civilian principle that possession, in particular, was the right being protected. On this issue, Professor Lonegrass added that notwithstanding the UCC's different "starting point," its laundry list of exceptions dictated ultimate results largely consistent with the results contemplated by the Committee pursuant to the entirety of the regime it was proposing.

In an effort to preemptively assuage any potential concerns over the implementation in Louisiana of a rule seemingly contrary to the notion of leases as strictly personal, one member of both the Committee and Council emphasized that, at least by the Committee's reading of the jurisprudence and legislative history, the extent of the "change" was not nearly so great as might be assumed, if in fact there was even a change at all. In particular, he cited *Hardy v. Lemon* as jurisprudentially recognizing that the lease of a corporeal movable has at least *some* effect against third persons, emphasizing that this decision remained good law over one hundred years later. Moreover, Professor Lonegrass stated, language in certain Civil Code Revision Comments suggested that prior redactors also believed this to be the case, adding that she herself had become likewise convinced of the notion throughout the course of her research and the Committee's work on the issue. She concluded by acknowledging the length of the proposed Comments to Article 2681.2, explaining that these were largely aimed at making clear everything she and the other Committee member had just mentioned, especially in light of the fact that Louisiana practitioners still widely understood leases to be strictly personal and, therefore, might otherwise be surprised at or confused by such a significant "change."

A motion was then made and seconded to adopt proposed Article 2681.2 and the corresponding Comments. With the floor open for discussion, one Council member wondered whether the phrasing of the reference to delivery might confuse the issue of good faith; the member queried whether the intent of the article was to require that delivery be made in good faith. Professor Lonegrass answered that the Committee intended for good faith to extend through the point of delivery, and a member of both the Committee and Council affirmed this response, noting also that the phrasing was consistent with earlier provisions. On this latter point, the Council member who had raised the issue pointed out that the faulty implication stemmed from the use of the definite article "the" preceding "lessee," as opposed to the indefinite "a," and opined that the latter would be preferable. Professor Lonegrass expressed understanding of this argument but noted that the Committee had debated this very same word choice and ultimately determined that use of "the" was necessary because in the present context, there could be a double-dealing lessor with multiple lessees, therefore demanding clarification that the conditional contemplated one particular lessee as opposed to any lessee. The Council member thanked Professor Lonegrass for this explanation and withdrew any objection. Another member then inquired as to whether there existed a body of jurisprudence defining delivery, in particular with respect to large pieces of equipment such as cranes or things with component parts. Professor Lonegrass noted that the proposed Comments clarified that the article plugged into the same version of delivery applicable in the sales context and that therefore a robust body of jurisprudence existed. She further clarified that the Committee had intentionally elected to use the phrase "actual delivery," as contrasted, for instance, with "constructive delivery," which it felt would not serve the same purpose of putting the world on notice of the lease.

The Council then returned to the motion to adopt Article 2681.2, which passed with no objection. The adopted proposal reads as follows:

Article 2681.2. Lease of a movable

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

Revision Comments – 2026

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

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

The Uniform Commercial Code also provides for the enforceability of a lease of goods against third persons. U.C.C. Section 2A-301 provides: "Except as otherwise provided...a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods, and against creditors of the parties." U.C.C. § 2A-301. Moreover, under U.C.C. Section 2A-302, a lease is effective "whether the lessor, the lessee, or a third party has possession of the goods." U.C.C. § 2A-302. Under U.C.C. Article 2A, a lease of goods is effective against third persons by virtue of the very existence of the lease contract. The rule adopted in this Article is narrower than the U.C.C. approach insofar as the protections conferred by this Article are dependent upon the lessee's good faith and actual delivery to the lessee.

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

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

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

(e) This article alone does not address all possible disputes which may arise between a lessee of a corporeal movable and a third person to the lease. For example, to resolve contests between a lessee and a transferee of the same corporeal movable, this Article must be read *in pari materia* with Article 518, which provides that the transfer of ownership of a corporeal movable takes place against third persons when the possession of the movable is delivered to the transferee, and if possession has not yet been delivered, then a subsequent transferee in good faith to whom possession is delivered acquires ownership. If the lessee takes actual delivery of the thing in good faith before the transferee takes possession of it, then the lessee prevails. By contrast, if the transferee takes possession of the thing in good faith before the lessee takes actual delivery of it, then the transferee prevails. Contests may also arise between the lessee and a third person who claims a right in the thing by virtue of the dissolution,

simulation, or nullity of the contract by which the lessor obtained the thing. In those cases, this Article must 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 lessor's seller annuls the sale by which the lessor obtained ownership of the leased thing on grounds of fraud or error, the lease is enforceable against the seller only if the lessee took actual delivery of the thing in good faith before the sale was declared null. This result is in line with Uniform Commercial Code, according to which a lessor with "voidable title" has the power to transfer a good leasehold interest to a "good faith subsequent lessee for value." See U.C.C. § 2A-304(1).

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

* * *

Professor Lonegrass then moved to Article 2711, which she noted addressed the issue of transfers of the leased thing by the lessor. She explained that existing law maintains that such a transfer does not as a matter of course transfer the lease itself, characterizing the proposed revisions as doing two things: (1) clarifying that the article spoke of transfers by the lessor, and (2) deleting the sentence regarding modification by agreement, given that this was the default rule already, and as such its inclusion risked giving rise to the negative implication that the rule did not apply where it was not explicitly included. A motion was made and seconded to adopt proposed Article 2711 as presented. Without further discussion, the motion passed with all in favor, and Article 2711 was approved as follows:

Article 2711. Transfer of thing by lessor does not terminate lease

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

Revision Comments – 2026

(a) This revision does not change the law. This Article combines Articles 2711 (Rev. 2004) and 2712 (Rev. 2004) to make clear that the principle stated in in the second sentence of Article 2712 (Rev. 2004) applies equally to movables and immovables. As under prior law, the transfer of the leased thing does not terminate the lease, which continues to have effects between the lessor and lessee. This is consistent with the principle that "a lease of a thing that does not belong to the lessor may nevertheless be binding on the parties," Article 2674 (Rev. 2004), and that "ownership of the thing by the lessor is not an essential element of the contract of lease." Id., cmt. (c).

(b) Following a transfer of a leased thing, the lessee has an action against the lessor for any loss the lessee sustained as a result of the transfer. For example, if the lease was not enforceable against third persons at the time of the transfer and the transferee exercises the right to evict the lessee before the end of the term, then the lessor has failed to perform obligations under the warranty of peaceful possession. See Article 2700. The consequences of this breach are determined under the law of conventional obligations, and may consist of injunctive relief, dissolution of the lease, or damages, according to the circumstances. See id., cmt. (b).

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

The Council next took up proposed Article 2712, dealing with the transfer of an immovable subject to an unrecorded lease. Professor Lonegrass explained that the main idea here was that the transferee of the immovable is not bound by the lease itself—that is, they do not take on the rights and obligations of the lessor under the lease—because this would require express subrogation and assumption. She characterized the proposed revisions as merely broadening the rule as explicitly stated in the Code, so as to clarify that it also applies to leases of goods, noting also that the express inclusion of movables had prompted the Committee to redraft the rule entirely in what it hoped would be a clearer manner. Finally, she pointed out that the second portion of current Article 2711 had been moved. A motion was then made and seconded to adopt Article 2712.

At this time, the Reporter suggested that it may be worth elaborating a bit upon the Committee's reasons for striking the first sentence of current Article 2712, so as to avoid any incorrect assumptions that the change was intended to effect a substantive change to the law. Professor Lonegrass clarified two points: First, the rule that a person acquiring an immovable subject to an unrecorded lease would not take on the rights and obligations of the lessor was the default, flowing from the rule that registry was necessary for such lease to have effects against third parties. Second, the Committee had found the phrase "bound by the lease" ambiguous and potentially misleading and thus wished to clarify exactly what was meant. A Council member queried whether he was mistaken in his understanding that the only thing that would need to happen for the relevant result to obtain was assumption, as opposed to both assumption and assignment. He reasoned that lines 225 and 226 of the materials suggested that only assumption was needed and that the shifting of rights and obligations could thus be achieved unilaterally. Professor Lonegrass acknowledged this point but countered that it was clear in the law that assumption and subrogation were two separate legal institutions. She reasoned that it would perhaps be clearer if the language read "unless he expressly so agrees..." The Council member maintained that both components should be mentioned, in response to which Professor Lonegrass clarified that this had always been the Committee's substantive intent. A member of both the Committee and the Council, noting that assignment requires assumption, pointed out that when the Committee was drafting the provision at issue, its intent had been simply to clarify that there was no automatic assumption; she reasoned that it was not necessary to make an additional clarification of this sort regarding assignment, because the principle would already be self-evident with respect to assignment. Another member of both the Committee and Council highlighted the importance of the word "legally" here as opposed to "contractually." Given that the article made specific mention of *legal* subrogation, he argued that it would still allow for contractual subrogation. This point assuaged all remaining concerns on the issue.

Before the Council returned to the motion on the floor, a suggestion was made that a statement to the effect of "This revision does not change the law" be added in the Comments to Article 2712, given that (1) such a clarification appeared in Comments to the other proposed articles, and (2) the present revisions *appeared*—at least textually—to be extensive, making such a clarification useful. The suggested addition was accepted as a friendly amendment, after which the Council adopted Article 2712 with all in favor as follows:

Article 2712. Transfer of ~~immovable subject to unrecorded lease~~ <u>thing does not transfer rights and obligations of lease</u>

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

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

<u>The transferee of a thing that is subject to a lease is not legally subrogated to the rights of his transferor and is not personally bound by the transferor's obligations under the lease unless he assumes them.</u>

Revision Comment—2026

This revision does not change the law. This Article restates the principle of Article 1764 that a particular successor, that is, one who acquires a thing by particular title, is not bound by the personal obligations of the transferor with respect to the thing, unless he has assumed those obligations. A particular successor likewise does not acquire any personal rights of the transferee unless he has been subrogated to those rights by the transferor. See Article 1764, cmt. (d). In the context of lease, this means that absent an agreement to the contrary, the transferee of a thing that is subject to lease does not become the lessor, is not bound by the lessor's obligations, and does not enjoy the lessor's rights in the lease. If the lessor has not assigned the right to the rent to the transferee, the lessor remains entitled to collect rent after the transfer, and the lessee may not refuse to pay rent or perform his other obligations because of the lessor's lack of ownership.

Professor Lonegrass then turned to Article 2713, noting that in present law this article dealt with the lessee's right to sublease, encumber, and assign its rights in the lease. She explained that the proposed revisions broadened this rule to address the ability of both parties to take such actions, clarifying that these revisions were meant to be semantic and clarificatory in nature, such that the article would contain a more precise expression of the law. She elucidated this final point further: Current Article 2713 provides that the lessee had the rights described unless they were foreclosed by the lease contract, implying that the parties had complete freedom of contract to restrict such alienations—which was ultimately not the case, as UCC-9 set out rules invalidating certain anti-alienation clauses in leases. According to Professor Lonegrass, this was why the Committee had inserted the "Except as..." clause. Moreover, the Committee divided the existing article into two paragraphs, the first dealing with the alienation rights of both parties and the second reproducing in slightly modified form the interpretive rule contained in present Article 2713. Professor Lonegrass then expanded on this final point, explaining that the interpretive rule in current Article 2713—which she noted was only ever intended to apply to leases of immovables—effectively codified a jurisprudential rule for construction of lease terms, as opposed to simply leaving the matter to the general rules of contractual interpretation. Because the rule, in the view of the Committee, was broader than the "proper" interpretive rule (and, to the best of the Committee's understanding, had been broadened unintentionally), the Committee had initially considered repealing it altogether; however, the Committee eventually decided against this course of action—first, because the rule was viewed as important in the context of leases of immovables, and second, because it applied only to immovables in the first place and was thus beyond the scope of the Committee's charge. Accordingly, the Committee had elected merely to clarify its limited application to immovables only. The Reporter added to this final point, characterizing the proposed revision as "putting the 'exception' to the default interpretive rules in a box" and leaving leases of movables subject to the general rules of contractual interpretation.

After a motion to adopt the article was made and seconded, the insertion of a period after "thing" on line 242 was accepted as a friendly amendment. Next, a Council member asked whether the phrase "unless contrary intent is expressed" had an understood meaning. Professor Lonegrass clarified that this phrase appeared in present law and therefore the Committee had simply elected not to modify it. A second Council member questioned Professor Lonegrass' characterization of the proposed revisions as not changing the law, pointing to language in the proposed Comments stating that the revisions changed the law "in part" and asking for clarification on the discrepancy. By way of response, Professor Lonegrass provided a more in-depth history of the provision and the line of jurisprudence that had preceded its enactment, emphasizing once more that the interpretive rule was always intended to apply only to immovables, though this was never made explicit. She also noted that UCC Chapter 9 contained its own interpretive rules regarding leases of movables, further complicating a reading of current Article 2713. In conclusion, she reasoned that the revisions could be reasonably characterized as either changing or not changing the law, though any such change was minimal in any case. Another Council member then queried whether the serial list of transactions was

omitting some other mode of transfer, expressing an uncertain belief that similar lists in other contexts contained some sort of "catch-all" to the effect of "or otherwise transfer." Professor Lonegrass replied that she had had a similar thought herself but had been unable to identify an example in either category. For this reason, she posited that the proposed language should be sufficient to cover all the necessary bases, a suggestion with which the Council member who raised the issue concurred. A vote was then taken on the motion to adopt Article 2713, and with all in favor, the provision was approved as follows:

Article 2713. ~~Lessee's right~~ Right to sublease, assign, or encumber

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

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

Revision Comments – 2026

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

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

(c) The second paragraph of this Article changes in the law in part. Under Article 2713 (Rev. 2004), a provision in the lease, whether of movables or immovables, that prohibited one of these rights was deemed to prohibit the others, unless a contrary intent is expressed, and in all other respects, a provision prohibiting subleasing, assigning, or encumbering was to be strictly construed against the lessor. Under this revision, such a construction of the lease of movables is not mandatory. The interpretation of a lease of movables, like any contract, should be governed by the general rules governing the interpretation of conventional obligations. See Articles 2045 through 2057.

Finally, Professor Lonegrass took up Article 2713.1. Again, she explained that the proposed revisions made no substantive changes to the law and were merely aimed at making explicit principles that had always been implicit. A motion was made and seconded to adopt Article 2713.1 as presented, and without further discussion Article 2713.1 was unanimously adopted as follows:

Article 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 La. 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 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." U.C.C. § 2A-305(1).

(b) Article 2674 sets forth an exception to the general rule found in this Article. Under Article 2674, a sublessee of a corporeal movable may acquire greater rights than those provided by the prime lease if the sublessee, in good faith and for fair value, leases from a merchant customarily selling or leasing similar things and in the regular course of the merchant's business. 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 which 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. See Article 2681.2. 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 "voidable title" has the power to transfer a good leasehold interest to a "good faith sublessee for value." See U.C.C. § 2A-305(1).

Having completed the materials, Professor Lonegrass then concluded her presentation, and the President called on Professor Thomas C. Galligan and Mr. Donald Price, leaders of the Torts and Insurance Committee, to begin their presentation of materials.

Torts and Insurance Committee

Mr. Price began by informing the Council that the present project had been undertaken in response to a pair of 2025 legislative resolutions, including in particular one co-authored by Representative Laurie Schlegel. Noting that Representative Schlegel and other legislators were acting primarily in response to issues presented by emerging technologies and applications in the realms of artificial intelligence ("AI") and social media—among which he cited "AI sycophancy," the tendency of many AI-powered chatbots to be overly complimentary and deferential to users, and algorithmic recommendations of certain viral social media "challenges"—he explained that the resolutions asked the Law Institute to study the possibility of bringing such programs and applications within the scope of the Louisiana Products Liability Act (LPLA) under the guise of "digital products." Mr. Price stated that the Committee ultimately decided against the LPLA-based approach in favor of the proposal contained in the materials, and he turned to Professor Galligan to provide further explanation.

Before delving into the substance of the issue and the Committee's discussions, Professor Galligan highlighted the fact that Representative Schlegel had attended and participated in every one of the meetings at which these issues had been discussed, had been flexible and receptive to the Committee's input, and was outstanding to work with. Turning to the project itself, he began by relaying a number of examples of the sorts of

cases Representative Schlegel and the other authors of the resolutions were hoping to address, citing among others algorithmically recommended content for several social media challenges. He noted that in some cases, the individuals who had been recommended such content had been seriously injured or even killed while attempting to participate in the various challenges.

Professor Galligan explained that his understanding of the legislative objective was simply to allow the imposition of liability for these recommendations. On this point, he emphasized the distinction between the content itself—for which the hosting website was protected by Section 230—and the algorithmic *curation and recommendation* of the content, which under several of the most recent federal court decisions was not protected. In any case, he noted that the scope was even broader, extending to programs such as AI-powered chatbots, AI-powered medical advice, self-driving cars, and other similar applications. He further explained that the underlying nature of the relevant technologies, as well as their broad range of applications and continuous rapid evolution, made them a poor fit for the LPLA, which he characterized as intentionally rigid and also mentioned was decades old. Moreover, Professor Galligan highlighted the fact that the LPLA was *restrictive* in nature, as it described specific bases and criteria for a finding of negligence in certain circumstances—as opposed to creating some new form of liability—and made these bases exclusive. Accordingly, he reasoned that it was poorly suited to serve Representative Schlegel's objectives, even if programs of the sort at issue *could* somehow be incorporated. For all these reasons, the Committee had concluded that a general negligence-based statement of duty was preferable to an LPLA-based approach: Namely, it would be sufficiently flexible to deal with continued technological evolution and would afford courts discretion in dealing with both novel issues and the various tangential issues, such as questions pertaining to Section 230 and constitutional freedom of speech.

Turning then to the proposed article itself, Professor Galligan first noted that no special thought had been given to its chronological placement among the related codal provisions. He proceeded to explain a handful of "decision points" within the text – first, the serialized list of functions to which the article would apply was carefully considered by the Committee, and additional functions such as hosting and marketing were consciously excluded as potentially overbroad. "Hosts," for instance, would encompass internet service providers, an "app store" carrying social media applications, and companies offering a web browser that could ultimately be used to access an AI service such as ChatGPT; because such companies would have no real involvement with or connection to the relevant programs, the Committee concluded that they should not be brought within the scope of the article. The word "distributes" was excluded on the same grounds, as potentially capturing any entity that in any number of possible ways—both direct and indirect—happened to make the program or software more widely available, even without any sort of real connection between the entity and the software. Professor Galligan noted that "markets" was also consciously excluded for similar reasons. Second, the phrase "interactive or personalized user experience" was intended by the Committee to limit the article's scope to the sort of dynamic social and algorithmic programs discussed earlier by excluding "ordinary" software such as Microsoft Office or cloud computing services. And finally, use of the term "user data or information"—which Professor Galligan characterized as serving the same or substantially similar function to "interactive or..."—had been a revision made during Committee discussions; in particular, the term replaced the similar phrase "user-*supplied* data or information" so as to avoid the implication that the phrase was intended to extend only to data and information *knowingly* provided by the user or collected with the user's knowledge or consent.

Professor Galligan next reiterated the article's high-level functionality, emphasizing as the most important aspect of the proposal the application of a general negligence duty. He explained that, while Louisiana law contemplates a near universal duty of reasonable care, courts were not infrequently inclined to hold that no such duty existed in certain sets of circumstances, typically those that were "out of the ordinary" or novel. In this sense, Professor Galligan characterized the article as merely recognizing, as opposed to *imposing*, the stated duty. To this point, he highlighted several examples of other "specific" negligence duties that were explicitly recognized in Louisiana law, including care for things within one's custody, parents for children, owners for buildings, and owners for livestock. Noting that the articles addressing these duties were merely describing the

application of a broader duty to certain specialized circumstances, Professor Galligan opined that the proposed article was no different in this regard.

With Professor Galligan having concluded his remarks, Mr. Price commented on a few additional matters. He first noted that the Committee had discussed the fact that the viability of claims for liability in the present context were likely to be highly expert-driven under any potential liability framework, explaining that this conclusion had further strengthened the Committee's confidence in the notion that a flexible, negligence-based approach was optimal. Similarly, he reiterated the rapid evolution of the technology at issue as one of the Committee's paramount considerations. He further highlighted the fact that the functionality of many AI programs is a "black box" even to its programmers. For these two reasons, the Committee had agreed that even spelling out the other negligence factors—such as in Article 2321 regarding damage caused by livestock—would be overly limiting on the courts tasked with applying the article. As for the Committee's decision not to explicitly list the other negligence factors, Professor Galligan added that this was also calculated to leave such issues as constitutional as-applied challenges to the courts as well. Overall, he summarized, the Committee's intent was simply to make clear that negligence liability could potentially arise in this context while leaving the specifics of that determination to the existing body of jurisprudence and to courts, and the plain statement of the duty was the simplest, most straightforward way the Committee could see of doing this.

A motion was then made and seconded to adopt the proposed article, and the first question posed by the Council was whether there was a federal law that preempted or potentially created "field occupation" issues. Professor Galligan answered in the negative, explaining that Section 230 was probably the closest but clarifying that Section 230 pertained to the content itself, while the proposed article was aimed at the curation and recommendation functions—and even more narrowly, in fact, at the actual activities related to the design of those functions. A second Council member expressed that she had intended to ask for further elaboration on the distinction between the sort of content-hosting protected by Section 230 and the activities at which the proposed article was aimed, but Professor Galligan's answer to the prior question had largely alleviated her concerns. He responded by further elucidating this distinction and emphasizing that it was being increasingly recognized by courts even in the more rigid context of products-liability claims. On this latter point, he highlighted the quasi-strict nature of products liability as making such an argument more difficult than it would be in the context of the proposed article—because, there, liability could be said to be based on the end-product itself, whereas the Committee's approach explicitly targeted actual *conduct*.

A third Council member then urged that "distributes" should be added back to the serialized list of functions to which the article applied, opining that it would be difficult to impose liability under the article absent the inclusion of this function. Professor Galligan reminded the Council that "distributes" had been consciously excluded by the Committee but nevertheless expressed willingness to alter course should the Council feel strongly about the issue. Another Council member asked whether the Committee had considered that the article might apply, for instance, to software used to develop wills and perform similar automatable legal functions, positing that such application was of questionable wisdom. The Co-Reporter answered that the Committee had considered this and in fact *intended* for such an application. Several other Council members voiced support for the Committee's decision in this regard.

Another Council member inquired further into the Committee's decision to eschew the LPLA as a vehicle for liability in the present context. Professor Galligan reiterated the issues related to inflexibility in the face of rapidly evolving technologies, adding that various specifics of the LPLA likewise made it challenging to effectively address the relevant technologies under its provisions. Among these, Professor Galligan cited as the primary obstacle the four exclusive grounds by which a product could be found "unreasonably dangerous" under the LPLA: the first, "construction or composition," would not be applicable in the context of software, as it dealt with physical defects caused during the manufacturing process; the grounds of failure to conform to express warranty similarly contemplated physical products subject to physical breakdown. The third, design, required the identification of an alternative design for the product that was capable of

preventing the alleged harm—more or less an impossibility in many cases that the article was aimed at addressing, given the nature of the "products" at issue. And the final ground, inadequate warning, was a questionable fit in the present context given that it contemplated some form of constructive knowledge of the danger, which presented issues similar to those attending the ground of design. Moreover, Professor Galligan argued that, even if these rules *could* somehow be tailored to the present context, their rigid nature, coupled with the rate of technological advancement within the industry, was likely to render the rules obsolete, or at least ineffective, in a relatively short period of time.

Returning to the earlier suggestion to add "distributes" to the list of covered functions, another Council member expressed support for the suggestion and made a corresponding motion to insert "distributes" on lines 2 and 4 of the materials. The motion was seconded, but Representative Schlegel cautioned against this addition, positing that, based on discussions with industry participants, it would likely render the bill nonviable by greatly expanding its scope and bringing in a far wider range of potential opponents. The Council member who made the motion acknowledged Representative Schlegel's concerns and stated that, while she believed the addition to be beneficial, she had no desire to harm the legislation's eventual chances and would withdraw the motion if the other Council members believed the insertion of "distributes" would create significant risk of opposition.

One Council member then asked whether the Committee had delved into any jurisdictional issues that might arise in claims under its proposed article. Professor Galligan answered that it had not, noting that the issue had come up in discussions but been determined by the Committee to be outside the scope of its charge. Another Council member inquired as to the impact of liability waivers embedded within user agreements, wondering whether such provisions would effectively render the article entirely obsolete. Professor Galligan answered that this would not be the case, as Louisiana law invalidated purported advance waivers of liability for personal physical harm or intentional torts.

Next, a Council member, referring back to Professor Galligan's prior comments regarding content curation as one of the article's targets, queried whether the article would apply even to something as innocuous as a personalized banner or sidebar advertisement on a webpage. The Committee's staff attorney responded that this was precisely why the Committee had elected to exclude "distributes" from the list of covered functions. Distinguishing first between the mere distribution of *content* from distribution of the software or program itself, Mr. Kunkel emphasized that a banner or sidebar ad containing a link to TikTok or ChatGPT could be said to be "distributing" those programs, thus opening the owner of the webpage to liability for harms they might cause. The Council member who had initially suggested the insertion of "distributes" agreed with this analysis of the term's potential scope but disagreed with the decision made by the Committee on this basis, urging instead that this weighed in favor of *including* "distributes" because it represented the only way to impose liability on the initial creator of the content. Mr. Kunkel responded that the Committee did not mean for the article to impose liability on the content creator, and that the inclusion of "distributes" would not operate to impose liability on the content creator in any event because potential liability would be imposed not on distributors of content hosted by or published on a given application but rather on distributors of *the application itself*: that is, distributors of the "computer program or software." Finally, the universe of liability that might result from the inclusion of "distributes" overlapped significantly with the universe of liability guarded against by Section 230.

The Council member then posed a follow-up question regarding the language "interactive or personalized user experience based on user data or information," positing that this language might apply to a computer program such as the Madden NFL video games, particularly in the context of online play; the member asked whether this was intentional. The staff attorney first highlighted the existence of the other negligence factors as prerequisites to liability, even though they were not explicitly listed in the proposed article, emphasizing that liability was only likely to arise in the proffered context in extreme outlier scenarios. Additionally, he explained that the Committee *did* intend for the article to impose liability in the case of some such scenario—for instance, where a hypothetical

security oversight was so egregious as to somehow lead directly to the address and identifying information of a minor being made available to another user in his or her area and thereafter to the abuse of the minor by the other user. Several Council members agreed with this decision, with one reasoning that although the article was not a perfect solution to the issues sought to be addressed, it was nevertheless as good a solution as could reasonably be hoped for given the issue's inherent real-world complexity. He further pointed to the fact that the proposed article would represent the expression of a clear policy interest—and without the risk of inadvertently restricting liability, limiting courts' discretion, or committing Louisiana to a rigid set of criteria by which to achieve that interest—as a major benefit of its potential enactment.

In response to the preceding discussion, one Council member commented that it seemed as though the proposed article was primarily aimed at addressing physical harm and wondered whether the proposal's odds of successfully navigating the legislative process would be improved by the inclusion of an explicit limitation or statement to this effect. In support of this suggestion, the member pointed to the inclusion of such a specification in certain other analogous "special negligence" articles, opining that consistency in this regard would be beneficial and further reasoning that the omission of such a statement from the present article might imply that it was intended to go further than the others. Professor Galligan pushed back on this suggestion by noting that the articles mentioned by the Council member made reference not only to damages but to *all* of the negligence elements, which the Committee had consciously elected not to do and felt strongly about; were such a statement to be included in the proposed article, it would be the only article constructed in such manner, referring only to the elements of duty and damages. Moreover, the construction of the analogous articles owed to their legislative history, namely the fact that they previously contemplated strict liability and thus their inclusion of all five negligence elements was specifically calculated to highlight the transition away from strict liability. The Council member accepted these as salient points and withdrew the suggestion, though another member queried whether the article's present formulation—which did not specify the sorts of harms for which damages could be awarded—might open the door to the availability of pure economic damages, thereby overruling longstanding jurisprudence. Professor Galligan answered that this would not be the case, citing two somewhat recent Louisiana cases in support of his position. He added that the vast majority of instances where liability might arise under the proposed article would involve user agreements containing waivers of liability to the fullest extent permitted by law, which for the purposes of Louisiana would leave only physical injuries, anyway. The Council was satisfied by these responses.

The Council then returned to the motions on the floor, one to adopt the article and another to insert "distributes." The Council member who made the latter motion withdrew it after other Council members agreed that this term should not be included. Before a vote was taken on the motion to adopt the proposed article, a Council member, pointing in particular to the proposed Revision Comment, queried whether the article and Comment would foreclose the availability of the LPLA as a potential avenue for liability. The member reasoned that the text of the Comment—in particular, the phrase "in this Article's absence"—could be read as a statement of exclusivity, making other theories of liability available *only* if the proposed article was *not* applicable. A second member suggested that, in this sense, the article could in fact be read as a limitation of liability; she explained that a general standard of care already applied under Article 2315, so under the aforementioned reading of the Comment, the application of the proposed article would dictate that the proposed article alone provided the applicable standard of care, to the exclusion of the standards contained in Article 2315, the LPLA, or elsewhere. The member reasoned that the LPLA's strict, or quasi strict, version of liability was a reason to preserve its potential applicability in the present context. Professor Galligan contended that the LPLA version of "strict" liability only applied in certain circumstances, none of which would ever apply in the present context; nevertheless, he opined that no harm would be done by revising the Comment to clarify that the proposed article did not foreclose any other avenue or theory of liability. Accordingly, a revision of the Comment language to this effect was proposed and accepted as a friendly amendment. With this revision in place, the motion to adopt the proposed article passed with all in favor, and the proposal was adopted to read as follows:

Article 2322.2. Software and computer programs

Any person who designs, develops, licenses, manufactures, or sells a computer program or software that provides an interactive or personalized user experience based on user data or information shall owe a duty to exercise reasonable care in the design, development, licensing, manufacture, or sale of the computer program or software.

Revision Comment – 2026

This Article does not foreclose the availability of any other cause of action or theory of liability under this Code or other applicable law.

There being no additional business, Professor Galligan and Mr. Price concluded their presentation, and the Friday session of the second January Council meeting was adjourned.

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

January 24, 2026

Saturday, January 24, 2026

Persons Present:

Amacker, Dawn
Braun, Jessica G.
Crigler, James C., Jr.
Crochet, Anne J.
Grover, Gail
Gulotta, James
Hamilton, Leo C.
Hawthorne, George "Trippe"
Holdridge, Guy
Norman, Rick J.
Payer, Julie Baxter
Philips, Harry "Skip", Jr.
Price, Donald W.
Pittman, Richard
Richardson, Sally Brown
Talley, Susan G.
Waller, Mallory C.
Womble, Jennifer
Ziober, John David

President Leo C. Hamilton called the Saturday session of the second January Council meeting to order at 9:00 a.m. on Saturday, January 24, 2026 at the Lod Cook Alumni Center in Baton Rouge. The President then called on Professor Richard Pittman, Reporter of the Children's Code Committee, to begin his presentation of materials.

Children's Code Committee

Professor Pittman began with a reminder of the discussion at the Council's last meeting concerning intervention and the definition thereof. He also noted that prior law authorized interventions only after adjudication, but the law was amended to allow intervention before adjudication, and the implementation of these changes has resulted in inconsistent practices throughout the state that warrant further clarification. Although the definition was previously approved, members of the Council again discussed the meaning of the term in the Code of Civil Procedure and questioned the need for a different definition in this context. The Reporter explained the nature of the Child In Need of Care proceedings and the fact that due to the privacy interests of the child and the family, it may not be appropriate for an intervening person to have full access to a record that includes counseling notes, drug screening results, agency investigation findings, and the like. Members of the Council then clarified that intervention may not be appropriate if a person simply possesses relevant information to the proceeding. In that case, the person should be called as a witness. Other examples given further highlight the need for the judge to have discretion so that relevant persons are not intentionally kept out of the proceeding. Moving to the definition of "other suitable individual," Professor Pittman explained the technical clarification, and both of the following definitions were ultimately approved:

Article 603. Definitions

As used in this Title:

* * *

(17) "Intervention" means an action by which a relative or other suitable individual may participate formally in a proceeding to facilitate permanency or to present evidence that it would be in the best interest of a child for the intervenor to be awarded custody of the child, visitation with the child, or another remedy.

* * *

(20) "Other suitable individual" means a person with whom the child or parent enjoys a close, established, significant relationship, yet not a ~~blood~~

relative, including a neighbor, godparent, teacher, ~~or close~~ friend ~~of the parent~~, or similarly situated individual.

* * *

Next, the Reporter introduced Children's Code Article 622 and the necessity of deleting the word "intervene" because of the timing of the continued custody hearing occurring thereafter. One Council member explained and gave an example of the department finding a child standing on the side of the road. At this point, the department calls a judge for removal and a relative appears on the scene willing to take custody of the child. The department does not have the authority to give the child to the relative, but a judge does. The judge may award provisional custody at this point without an intervention, and at the next formal proceeding, the court may grant or deny any intervention and/or place the child with any other suitable individual. Due to the temporary nature at this early stage, formal intervention is not appropriate. Members of the Council, however, expressed concern over relatives or other suitable individuals gaining custody, even if it is temporary, without a more formal process. Although another Council member pointed out that judges have the authority to grant ex parte custody to anyone they want, the Reporter agreed to withdraw this proposal from consideration.

Now focusing on the proposed change to Children's Code Article 631, the Reporter again noted a temporal issue. Prior to adjudication, it is not appropriate for the court to award permanent custody. With little discussion, the following language was approved:

Article 631. Authority to file petition; custody

* * *

B. At any time prior to adjudication, any person, including a relative of the child, may petition the court for the provisional ~~or permanent~~ legal custody of the child.

Professor Pittman next explained that proposed Children's Code Article 658.1 creates parameters around intervention to alleviate concerns expressed by practitioners. Traditionally, Child In Need of Care proceedings are closed due to the sensitive and often confidential information surrounding the circumstances of families. If intervenors are allowed full access to all documents and the right to attend all hearings, privacy and confidentiality are breached. To more closely follow civil intervention, the Reporter agreed to add language to Paragraph A that will signal the person on behalf of whom the intervenor wishes to intervene. Members of the Council then discussed whether the motion to intervene may be denied without a hearing and the need for clarifying language. Examples were given in which a motion to intervene should be easily denied without a hearing, such as if intervention is sought by John Q. Public; on the other hand, if a relative or other suitable individual files for intervention, a hearing may be necessary to determine the allowance and suitability thereof.

Discussion of Paragraph B of proposed Children's Code Article 658.1 revealed confusion as to how someone may be allowed to intervene but then not receive notice of the adjudication hearing or be allowed to present evidence as restricted by Paragraph C. The Reporter tried to explain that the adjudication hearing is best equated to criminal law and the prosecutor's duty to prove the case. If the state is unable to prove that the court needs jurisdiction over the child, the proceeding is dismissed. Therefore, it is not appropriate for an intervenor to possibly assist the state by attending or presenting evidence. The Reporter reiterated that the role of an intervenor is to provide evidence about the best interest of the child, but best interest is not at issue in an adjudication. Other Council members argued that the court should have discretion to permit intervention at an adjudication hearing and provided an example of the state only calling a department caseworker to prove the case, but an intervenor possessing relevant conflicting information that would not warrant a finding of a child in need of care. A few members of the Council spoke against giving the court discretion in this limited situation because adjudication is the gateway to termination of parental rights, but new language was approved with only one dissenting vote.

Moving to Paragraph D, Professor Pittman noted that the court shall terminate the intervention if it is no longer in the best interest of the child, which signals to the court the temporary nature of interventions. Members of the Council asked whether the intervenor is entitled to notice and a hearing prior to the dismissal or whether the court can dismiss ex parte. Other members proposed clarifying language concerning a hearing or a finding on the record, and still others raised concerns about extra hearings and advocated that notice was sufficient. With respect to Paragraph E, the Reporter stated that the general disposition articles grant the court broad authority to place the child with any person, regardless of whether the person has intervened in the proceeding, as long as the placement is in the best interest of the child. Although similar language is usually reserved for Comments, in this case its importance necessitates inclusion in the text itself. Having completed discussion of the new provision, the following language was then approved:

Article 658.1. Motion for intervention

A. At any stage of a proceeding, upon written motion to intervene and after a contradictory hearing, the court may allow a relative or other suitable individual to intervene on behalf of the intervenor or a party if good cause is shown that intervention is in the best interest of the child and, after adjudication, will facilitate permanency for the child. The court may deny the motion to intervene or set a contradictory hearing with notice to all parties.

B. (1) An intervenor is entitled to notice of any hearing and to present evidence relevant to the best interest of the child.

(2) Unless good cause is shown, an intervenor may not participate in or present evidence at an adjudication hearing, unless called as a witness by a party. An intervenor may not inspect or copy any record of the case prior to an in camera inspection by the court and an opportunity to be heard by the parties.

C. The court may exclude an intervenor from any part of a hearing as necessary to protect the privacy interests of the parent or child.

D. After a hearing the court shall dismiss an intervention upon a determination that the intervention is no longer in the best interest of the child.

E. This Article shall not be construed to require intervention for a relative or other suitable individual to be awarded custody of the child, visitation with a child, or another remedy.

To complete this project, the Council quickly approved the deletion of existing Children's Code Articles 650, 697, and 707 as duplicative of the new article on intervention.

The Reporter next asked the Council to turn to the "Definition of Foster Care" materials and explained that DCFS asked the Committee to review certain terminology relative to foster parents and foster homes for update. The Council thereafter approved the materials in globo as follows:

Article 603. Definitions

As used in this Title:

* * *

(4)(a) "Caretaker" means any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster ~~parent~~ caregiver, an operator or employee of a residential or treatment facility licensed by the Department of Children and Family

Services or the Louisiana Department of Health, or other person providing a residence for the child. "Caretaker" shall not include an operator or employee of a correctional facility, detention facility, nonresidential school, or unlicensed residential or child care provider.

* * *

(14) "Foster care" means ~~placement in~~ the child is in the custody of the department and the department is providing temporary services including care by a foster ~~family home~~ caregiver, a ~~relative's home~~ relative, a residential child caring facility, or other living arrangement approved and supervised by the state ~~for provision of substitute care for a child in the department's custody. Such placement shall not include a detention facility~~.

(15) "Foster ~~parent~~ caregiver" means an individual who provides ~~residential foster~~ a home and care with the approval and under the supervision of the department for a child in its custody.

* * *

(17) "Mandatory reporter" is any of the following individuals:

* * *

(l) A foster ~~parent~~ caregiver.

* * *

Article 616. Registry; screening of CASA volunteers, staff, and board members; confidentiality

* * *

F. Information from investigations of reports that are inconclusive may be disclosed, with the applicant's written consent, for the limited purposes of evaluating the applicant to be a foster ~~parent~~ caregiver, an adoptive parent, or caregiver pursuant to R.S. 46:56(F)(11).

* * *

Article 622. Placement pending a continued custody hearing

* * *

B. Unless the best interest of the child requires a different placement, a child who appears to be a child in need of care and whose immediate removal is necessary shall be placed, pending a continued custody hearing, in accordance with the following priorities of placement:

* * *

(4) In foster care ~~under the supervision of the department~~ until further orders of the court.

* * *

Article 623. Notice; right to be heard

A. The department shall give notice of any order regarding the child issued in accordance with Article 619(C) or 620 to the child's parents, the district defender or other entity designated for the jurisdiction by the Indigent Parents' Representation Program for representing parents, the entity

designated for the jurisdiction by the Louisiana Supreme Court to provide qualified, independent counsel for the child, and other parties. The department shall also give notice regarding any child in foster care to any foster ~~parent~~ caregiver, pre-adoptive parent, and relative providing care. The department shall notify the court of each party's address and shall have a continuing duty to provide current information to the court about each party's whereabouts.

* * *

D. If a foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child fails to appear at a hearing, the department shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

E. The court shall solicit and consider information regarding the care and treatment of the child from any foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child who appears for the hearing.

* * *

Article 624. Continued custody hearing; continued safety plan hearing; federal Indian Child Welfare Act

* * *

B. After notice to all parties and when a child is in foster care, to any foster ~~parent~~ caregiver, pre-adoptive parent, and relative providing care, and upon a showing of good cause, the court may grant, deny, or condition a requested continuance of the proceeding in accordance with the best ~~interests~~ interest of the child. The hearing may be continued for up to three additional days. If a continuance is granted, the court shall issue a written order identifying the mover and reciting the particular facts justifying the continuance.

C.

* * *

(2) If a foster ~~parent~~ caregiver, pre-adoptive parent, ~~adoptive parent,~~ or relative providing care for the child fails to appear at the hearing, the department shall report to the court whether notice was given, or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

* * *

Article 672.3. Diligent search for relatives; notice; failure to respond

* * *

C. All relatives of the child identified in the diligent search required by this Article, subject to exceptions due to family or domestic violence or other safety concerns, shall be provided with a notice that does all of the following:

* * *

(3) Describes the process for becoming a licensed foster ~~family home~~ caregiver and the additional services and supports available for children ~~placed~~ in ~~approved~~ foster ~~homes~~ care.

* * *

Article 679. Notice; presence at disposition

* * *

D. The department shall give notice of the right to appear at the disposition hearing to any foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child.

E. If a foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child fails to appear at the disposition hearing, the department shall report to the court whether notice was given, or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

F. The court shall solicit and consider information regarding the care and treatment of the child from any foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child who appears for the hearing.

* * *

Article 690. Case review report purpose; contents

* * *

B. The case review report shall address the following:

* * *

(3) The extent of progress which has been made toward alleviating or mitigating the causes necessitating ~~placement in~~ foster care.

* * *

Article 695. Notice; foster ~~parent~~ caregiver, pre-adoptive parents, relatives providing care; right to be heard

A. The department shall give notice of the right to appear at each case review hearing to any foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child.

* * *

C. If a foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child fails to appear at a case review hearing, the department shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

D. The court shall solicit and consider information regarding the care and treatment of the child from any foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child who appears for the hearing.

* * *

Article 702. Permanency hearing

* * *

D.

* * *

(2)

* * *

(c) For the purposes of Subsubparagraph (a) of this Subparagraph, a foster ~~parent~~ caregiver, relative, or other suitable individual with whom a child under the age of six has resided continuously for nine months or more is a person who has a significant relationship with the child. Nothing in this Subparagraph shall be construed to interfere with any rights afforded to biological parents.

* * *

Article 705. Notice; right to be heard

A. The department shall give notice of the right to appear at each permanency hearing to any foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child.

* * *

C. If a foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child fails to appear at a permanency hearing, the department shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

D. The court shall solicit and consider information regarding the care and treatment of the child from any foster ~~parent~~ caregiver, pre-adoptive parent, or relative providing care for the child who appears for the hearing.

* * *

Article 1003. Definitions

As used in this Title:

* * *

(7) "Foster care" means the child is in the custody of the department and the department is providing temporary services including care by a foster caregiver, a relative, a residential child caring facility, or other living arrangement approved and supervised by the state.

* * *

Article 1004. Petition for termination of parental rights; authorization to file

* * *

G. ~~Foster parents~~ A foster caregiver who ~~intend~~ intends to adopt the child may petition for the termination of parental rights of the foster child's parents when, in accordance with Article 702(D), adoption is the permanent plan for the child, the child has been in state custody under the foster

~~parent's~~ caregiver's care for seventeen of the last twenty-two months, and the department has failed to petition for ~~such~~ termination.

* * *

Article 1112. Inability due to court intervention

* * *

B. Upon notice to the department and after a contradictory hearing, if requested by the department, a parent may, with approval of the court, execute a private surrender of a child in the legal custody of the department to the foster ~~parent with whom the child was placed by the department~~ caregiver.

* * *

Article 1269.1. Continuing contact agreements; voluntary

Agreements for continuing contact by certain biological relatives or foster ~~parents~~ caregivers with an adopted child after an adoption do not violate any public policy of this state, provided the adopting parents and biological relative or foster ~~parent~~ caregiver voluntarily execute the agreement in conformity with the requirements of this Chapter.

* * *

Article 1269.2. Continuing post-adoption contact; ~~foster child adoptions~~ adoption of child in foster care

* * *

B. If there is no parental relationship that meets the requirements of Paragraph A of this Article, the court may approve an agreement, executed in conformity with the requirements of this Chapter, that provides for continuing contact between the child to be adopted and any ~~other~~ relative or foster ~~parent~~ caregiver whose relationship with the child meets those requirements.

C. When adoption is approved by the court as the permanent plan for the child, the department shall inform any parent, grandparent, sibling, ~~or any other~~ relative, or foster ~~parent~~ caregiver who meets the requirements of Paragraph A or B of this Article of the possibility of post-adoption contact with the child upon agreement with the adoptive parents in accordance with the provisions of this Chapter.

* * *

Article 1269.7. Agreements confected after final decree

The adoptive parent and any relative or foster ~~parent~~ caregiver who may be permitted continuing contact ~~by~~ in accordance with Article 1269.2(B) may enter into an agreement regarding communication or contact after entry of a final decree of adoption. Any ~~such~~ agreement shall be enforceable only if filed with the court and approved in accordance with this Chapter.

* * *

Article 1279.6. Educational opportunities and assistance

A.(1) A child ~~who is~~ in foster care ~~pursuant to placement through the department~~ shall be allowed to remain enrolled in the public school in which the child was enrolled at the time ~~he~~ the child entered foster care for the duration of the child's stay in the custody of the state or until ~~he~~ the child completes the highest grade offered at the school, if the department determines that remaining in ~~such~~ that school is in the best interest of the child. Transportation of the child shall be provided pursuant to R.S. 17:238(C).

* * *

B. When a child is in the custody of the department and is placed with a foster ~~parents~~ caregiver who ~~have~~ has other children living in the home who already attend a nonpublic or parochial school, the ~~foster~~ child may attend the same nonpublic or parochial school if the department finds it is in the best interest of the child, and if the child meets the admission requirements of the nonpublic or parochial school. The department shall not be directly responsible for paying for the expenses associated with such education.

C. When a child is in the custody of the department and is placed with a foster ~~parents~~ caregiver who ~~have~~ has other children in the home who are participants in an approved home study program~~,~~ pursuant to R.S. 17:236.1, the department may approve the placement of the ~~foster~~ child in an approved home study program if the department finds it is in the best interest of the child. Home study programs approved by the Department of Education to educate ~~foster~~ children in foster care shall offer a sustained curriculum of quality at least equal to that offered by public schools at the same grade level~~,~~ pursuant to R.S. 17:236.1(C)(1). Notwithstanding any other provision of law to the contrary, the Department of Education shall provide the department, upon request, verification that a home study program in which a ~~foster~~ child in foster care is participating has been approved pursuant to R.S. 17:236. The foster ~~parent~~ caregiver shall provide the department appropriate documentation, including but not limited to copies of standardized tests, to substantiate that the child is progressing on grade level and at a rate equal to one grade level for each year in the program.

* * *

Article 1404. Definitions

As used in this Title:

(1) "Caretaker" means any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster ~~home parent~~ caregiver, or other person providing a residence for the child.

* * *

Article 1427. Authority to transport and detain

* * *

C.(1) In addition to other persons authorized by this Article to transport to a treatment facility a child in whose name an emergency certificate has been issued, any of the following persons may also accompany the child during ~~such~~ transportation:

(a) A parent, including a foster ~~parent~~ caregiver, subject to the conditions of Subparagraph (2) of this Paragraph.

* * *

Lastly, Professor Pittman directed the Council's attention to the document marked "Advice of Rights in FINS" and reminded members of the discussion at its last meeting and the directive to rearrange the proposal, clarify whether each of the listed items pertain to the child or the parent or both, and add removal of the child as a consequence. The Reporter complied with these requests, and the Council approved the following:

Article 740. Advice of rights

A. At the continued custody hearing or at the first hearing where the child appears, whichever occurs first, the ~~court~~ judge shall advise the parents and the child, in a developmentally appropriate manner and in terms understandable ~~by~~ to the child and the parents, of all of the following:

(1) The child, parents, and any other persons subject to the jurisdiction of the court are parties to the proceeding in accordance with Article 729.

~~(1)~~ (2) The nature of the proceedings as provided in Article 792.

(3) The consequences of formal proceedings including:

(a) The possibility of juvenile detention if the child is held in contempt in accordance with Article 791.

(b) The possibility of a fine or imprisonment if an adult is held in contempt in accordance with Article 1509.

(c) The possibility of removal of the child from his home in accordance with Article 779.

~~(2)~~ (4) The nature of the allegations.

~~(3)~~ (5) The informal family services plan procedure.

~~(4) The right to an adjudication hearing.~~

~~(5) The right to retain and be represented by an attorney.~~

(6) The ~~nature of Families in Need of Services proceedings as set forth in Article 792 and the~~ confidentiality of Families in Need of Services records as set forth in Article 793.

(7) The right to have notice of and attend all hearings.

(8) The right to be free from discrimination based on race, religion, disability, national origin, and sex.

(9) The right to be provided qualified interpretation, translation, and language assistance services.

(10) The right to be provided reasonable accommodations for any disability.

~~(4)~~ (11) The right of the child to an adjudication hearing.

(12) The right of the child to have regular and meaningful communication with the child's attorney in a way that is understandable to the child.

(13) The right of the child to have the child's attorney present the child's case, including presenting the child's wishes.

(14) The right of the child to testify as to the child's wishes.

~~(5)~~ (15) The right of the parent to retain and be represented by an independent and qualified attorney who shall have duties of loyalty, confidentiality, advocacy, and competent representation.

B. If a petition seeking a formal adjudication is filed, the court shall appoint independent legal counsel for the child~~,~~ or refer the child for representation by the district public defender. Neither the child nor anyone purporting to act on ~~his~~ behalf of the child may be permitted to waive this right. If the court finds that the parents of the child are financially able, it may order the parents to pay some or all of the costs of the child's representation.

C. If a petition seeking a formal adjudication is filed, the court shall also advise the child and parent of ~~his~~ the privilege against self-incrimination.

D. Written notice of the rights set forth in Paragraph A of this Article shall be given to the child; the parents, foster parents, or pre-adoptive parents of the child; and any relative providing care to the child.

There being no additional business, Professor Pittman then concluded his presentation, and the second January Council meeting was adjourned.

Jessica G. Braun

Nick Kunkel

Josef Ventulan