

Introduced by Senator Lieu

December 3, 2012

An act to amend and repeal Section 9321 of the Commercial Code, relating to business, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 6, as introduced, Lieu. Business.

Until January 1, 2013, existing law provides that a licensee in ordinary course of business, as defined, takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, as specified.

This bill would indefinitely extend the operation of that provision and further provide that a person does not become a licensee of intellectual property in the ordinary course if the transaction involves meaningful negotiation of material terms of the license. This bill would, notwithstanding any other law, make its provisions operative on January 1, 2013, and state the Legislature's intent in this regard.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. To ensure economic stability and continuity for
- 2 purposes of contract interpretation, it is the intent of the Legislature
- 3 to negate the repeal on January 1, 2013, of, and also to enhance,

1 existing provisions within Section 9321 of the Commercial Code
2 relating to a licensee in ordinary course of business.

3 SEC. 2. Section 9321 of the Commercial Code, as amended
4 by Section 1 of Chapter 315 of the Statutes of 2009, is amended
5 to read:

6 9321. (a) In this section, “licensee in ordinary course of
7 business” means a person that becomes a licensee of a general
8 intangible in good faith, without knowledge that the license violates
9 the rights of another person in the general intangible, and in the
10 ordinary course from a person in the business of licensing general
11 intangibles of that kind. A person becomes a licensee in the
12 ordinary course if the license to the person comports with the usual
13 or customary practices in the kind of business in which the licensor
14 is engaged or with the licensor’s own usual or customary practices.
15 *A person does not become a licensee of intellectual property in*
16 *the ordinary course if the transaction involves meaningful*
17 *negotiation of material terms of the license.*

18 (b) A licensee in ordinary course of business takes its rights
19 under a nonexclusive license free of a security interest in the
20 general intangible created by the licensor, even if the security
21 interest is perfected and the licensee knows of its existence.

22 (c) A lessee in ordinary course of business takes its leasehold
23 interest free of a security interest in the goods created by the lessor,
24 even if the security interest is perfected and the lessee knows of
25 its existence.

26 ~~(d) This section shall remain in effect only until January 1, 2013,~~
27 ~~and as of that date is repealed, unless a later enacted statute, that~~
28 ~~is enacted before January 1, 2013, deletes or extends that date.~~

29 SEC. 3. Section 9321 of the Commercial Code, as amended
30 by Section 2 of Chapter 315 of the Statutes of 2009, is repealed.

31 ~~9321. (a) A lessee in ordinary course of business takes its~~
32 ~~leasehold interest free of a security interest in the goods created~~
33 ~~by the lessor, even if the security interest is perfected and the lessee~~
34 ~~knows of its existence.~~

35 ~~(b) This section shall become operative on January 1, 2013.~~

36 SEC. 4. Notwithstanding the operative date set forth in Section
37 2 of Chapter 315 of the Statutes of 2009, Section 9609 of the
38 Government Code, or any other provision of law, Sections 2 and
39 3 of this bill are operative commencing on January 1, 2013.

1 SEC. 5. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 In order to negate the repeal of, and to enhance, existing law
6 relating to a licensee in ordinary course of business that ensure
7 economic stability and continuity for purposes of contract
8 interpretation, it is necessary that this act take effect immediately.

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