

AMENDED IN SENATE JANUARY 15, 2013

SENATE BILL

No. 6

Introduced by Senator Lieu

December 3, 2012

An act to amend ~~and repeal~~, *add, 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 amended, Lieu. Business.

~~Until January 1, 2013, existing~~

~~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: lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.~~

~~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, until January 1, 2015, also provide that a licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.~~ 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: 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,
4 existing provisions within Section 9321 of the Commercial Code
5 relating to a licensee in ordinary course of business.

6 SEC. 2. Section 9321 of the Commercial Code is amended to
7 read:

8 9321. (a) A lessee in ordinary course of business takes its
9 leasehold interest free of a security interest in the goods created
10 by the lessor, even if the security interest is perfected and the lessee
11 knows of its existence.

12 (b) This section shall become operative on January 1, ~~2013~~
13 ~~2015~~.

14 ~~SEC. 2. Section 9321 of the Commercial Code, as amended~~
15 ~~by Section 1 of Chapter 315 of the Statutes of 2009, is amended~~
16 ~~to read:~~

17 ~~9321.~~

18 SEC. 3. Section 9321 is added to the Commercial Code, to
19 read:

20 9321. (a) In this section, “licensee in ordinary course of
21 business” means a person that becomes a licensee of a general
22 intangible in good faith, without knowledge that the license violates
23 the rights of another person in the general intangible, and in the
24 ordinary course from a person in the business of licensing general
25 intangibles of that kind. A person becomes a licensee in the
26 ordinary course if the license to the person comports with the usual
27 or customary practices in the kind of business in which the licensor
28 is engaged or with the licensor’s own usual or customary practices.
29 ~~A person does not become a licensee of intellectual property in~~
30 ~~the ordinary course if the transaction involves meaningful~~
31 ~~negotiation of material terms of the license.~~

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

1 (c) A lessee in ordinary course of business takes its leasehold
2 interest free of a security interest in the goods created by the lessor,
3 even if the security interest is perfected and the lessee knows of
4 its existence.

5 (d) *This section shall remain in effect only until January 1, 2015,*
6 *and as of that date is repealed, unless a later enacted statute, that*
7 *is enacted before January 1, 2015, deletes or extends that date.*

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

10 SEC. 4. Notwithstanding the operative date set forth in Section
11 2 of Chapter 315 of the Statutes of 2009, Section 9609 of the
12 Government Code, or any other provision of law, Sections 2 and
13 3 of this bill are operative commencing on January 1, 2013.

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

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