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DEPARTMENT OF
ADMINISTRATIVE SERVICES

SALLY W. NAGY
CHIEF INFORMATION OFFICER

CITY OF SACRAMENTO
CALIFORNIA

May 28, 2002

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Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: PROPOSED TELECOMMUNICATION ORDINANCE

RECOMMENDATION:

This report recommends that the Law and Legislation Committee direct the City Attorney to review and provide legal oversight of the development of a draft Telecommunication Ordinance.

CONTACT PERSON: Vivienne Nicol, Information Technology Dept., 566-1508

FOR COUNCIL MEETING OF: June 4, 2002

SUMMARY:

This report recommends that the Law and Legislation Committee direct the City Attorney to review and provide legal oversight of the development of a proposed Telecommunication Ordinance to be drafted by City staff with assistance from the legal firm of Miller and Van Eaton. At this time the City of Sacramento has no ordinance that governs telecommunication vendors wishing to work within or for the City. This leaves the City exposed to lack of consistent use of their rights-of-way and lack of consistency of contracts with telecommunication vendors.

BACKGROUND:

The City of Sacramento does not have a Telecommunication Ordinance in place. It is proposed that the City's Information Technology department will chair a City cross-departmental team to create a draft Telecommunication Ordinance with assistance from the legal firm of Miller and Van Eaton. The City's Information Technology department has worked with the City's Attorney Office to have Miller and Van Eaton qualified to work for the City and they are aware of the scope of work that will be undertaken by Miller and Van Eaton.

The firm of Miller and Van Eaton is recognized as national specialists in the area of city government telecommunication ordinances, and has compiled many for various cities over the last several years.

Once a draft ordinance is written it will be provided to the City Attorney's Office for review and approval. It is anticipated that the various provisions of the ordinance will:

- Provide authority to coordinate long-term projects by multiple telecommunications service providers to minimize any disruptive impact on City streets and the community during system construction;
- Establish a policy to set guidelines to balance the concerns of residents against deployment of facilities to provide new telecommunication services in the community;
- Limit the levels of local regulations by multiple departments and establish a streamlined and coordinated review and approval process;
- Give clear guidance to potential service providers regarding Sacramento's policies, practices, and requirements for locating facilities in the City;
- Protect and maintain public facilities in the City's rights-of-way;
- Adopt a process and requirements consistent with current law and comport with findings from the most recent California, national, and local court cases;
- Provide a public notice opportunity for comment from the City residents, the industry representatives, as well as interested City departments;
- Establish the authority and role of the City for managing its public rights-of-way and property and receiving just compensation for use thereof by others;
- Ensure that the City creates no barriers to entry into the Sacramento market for telecommunications services, and that access to City property and facilities is on equivalent non-discriminatory terms to all users as appropriate.

FINANCIAL CONSIDERATIONS:

The cost the City will incur for the development of the draft ordinance will be less than \$20,000. This money is available in the FY 02 Information Technology budget.

ENVIRONMENTAL CONSIDERATIONS: None applicable at this time.

POLICY CONSIDERATIONS:


The proposed Telecommunication Ordinance would help to implement the Information Technology Strategic Plan's Goal 1-2c – Technical Architecture Initiative that has a key milestone the development of process for fiber management.

ESBD/SBE CONSIDERATIONS: None.

Respectfully Submitted,

RECOMMENDATION APPROVED:


SALLY W. NAGY
Chief Information Officer


BETTY MASUOKA
Assistant City Manager



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DEPARTMENT OF
POLICE

ARTURO VENEGAS, JR.
CHIEF OF POLICE

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May 28, 2002
Ref: 05-43

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Assembly Bill 496 (AB 496) - Support Letter

LOCATION AND COUNCIL DISTRICT: City-wide

RECOMMENDATION

It is recommended that the Law and Legislation Committee review and approve the attached letter of support for Assembly Bill 496 which amends civil liability statutes pertaining to firearms and ammunition.

CONTACT PERSONS

Chief Arturo Venegas, Jr. - 264-5121
Tina Lee-Vogt, Administrative Officer - 264-7346

FOR COMMITTEE MEETING OF June 4, 2002

SUMMARY

This report provides information on a bill now active before the California State Legislature, Assembly Bill 496. (AB 496). If passed and approved by the Governor, this bill would repeal current Civil Code Section 1714.4 and expressly provide that the design, distribution or marketing of firearms and ammunition is not exempt from the general duty to use ordinary care or skill required by Civil Code Section 1714, the statute that imposes liability tort for intentional and negligent actions.

COMMITTEE/COMMISSION ACTION

None.

BACKGROUND

Civil Code Section 1714.4 provides that, in a products liability action, no firearm or ammunition shall be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged. AB 496 responds to the California Supreme Court holding in Merrill v. Navegar, Inc. (Navegar) that Civil Code Section 1714.4 barred plaintiffs from maintaining an action against the manufacturers of assault weapons used by one man in a 1993 mass-shooting that killed eight people and injured six others. If passed by the Legislature and approved by Governor Davis, this legislation would repeal Civil Code Section 1714.4 and overturn the Navegar decision and well as other cases following Navegar.

AB 496 is co-sponsored by the Coalition to Stop Gun Violence/the Million Mom March and the Brady Campaign to Stop Gun Violence. This legislation is supported by a number of organizations including the California Police Chiefs' Association, the City and County of Los Angeles, and the American College of Emergency Physicians, California Chapter. The Police Department recommends City Council support of the this legislation.

FINANCIAL CONSIDERATIONS

Support of this legislation would not result in any fiscal impact to the City's budget.

POLICY CONSIDERATIONS

Support of this legislation is consistent with the City's philosophy related to firearm safety.

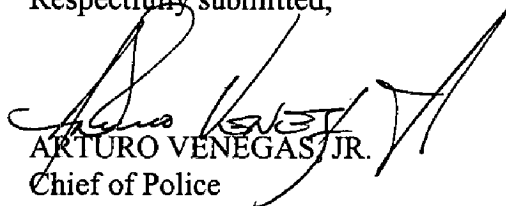
ENVIRONMENTAL CONSIDERATIONS

The actions recommended in this report are exempt from the California Environmental Quality Act according to CEQA guidelines Section 15378(3)(b)(1).

ESBD CONSIDERATIONS

None. No goods or services are being purchased.

Respectfully submitted,


ARTURO VENEGAS JR.
Chief of Police

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

Attachments

Draft letter of Support
AB 496

AV:tlv

June 4, 2002

The Honorable Paul Koretz
California State Assembly
State Capitol, #2176
Sacramento, CA 95814

Dear Assembly Member Koretz:

SUBJECT: Assembly Bill 496

On behalf of the City of Sacramento, it is my pleasure to offer this letter of support for Assembly Bill 496 which would repeal current Civil Code Section 1714.4.

This legislation responds to the California Supreme Court holding in Merrill v. Navegar, Inc. (Navegar) that Civil Code Section 1714.4 barred plaintiffs from maintaining an action against the manufacturers of assault weapons used by one man in a 1993 mass-shooting that killed eight people and injured six others. If approved by the Legislature and signed by Governor Davis, this legislation would repeal Civil Code Section 1714.4 and overturn the Navegar decision and well as other cases following Navegar.

Thank you for sponsoring this significant public safety legislation.

Sincerely

STEVE COHN, CHAIR
Law and Legislation Committee
Sacramento City Council

AMENDED IN SENATE APRIL 23, 2002
AMENDED IN SENATE AUGUST 21, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 496

**Introduced by Assembly Members Koretz, Shelley, and
Steinberg**

(Principal coauthors: Senators Perata and ~~Scott~~ *Scott*).

(Coauthors: Assembly Members ~~Chu, Frommer, and Goldberg~~
Firebaugh, Frommer, Goldberg, and Horton)
(Coauthor: Senator *Torlakson*)

February 21, 2001

An act to amend Section 1714 of, and to repeal Section 1714.4 of, the Civil Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 496, as amended, Koretz. Firearms.

Existing law provides that ~~every one~~ *everyone* is responsible for the result of willful acts and for injury to another occasioned by his or her want of ordinary care or skill in the management of his or her person or property, as specified.

This bill would ~~provide, in addition, that these provisions apply to~~ *additionally specify that* the design, distribution, ~~and~~ *or* marketing of firearms and ammunition *is not exempt from the provisions described above. The bill would also make technical changes.*

Existing law provides that no firearm or ammunition ~~shall~~ *may* be deemed defective in design for purposes of a products liability action, on the basis that the benefits of the product do not outweigh the risk of

injury posed by the potential to cause serious injury, damage, or death when discharged, as specified.

This bill would repeal those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 1714 of the Civil Code is amended to
2 read:

3 1714. (a) ~~(1)~~—Every one is responsible, not only for the result
4 of his *or her* willful acts, but also for an injury occasioned to
5 another by his *or her* want of ordinary care or skill in the
6 management of his *or her* property or person, except so far as the
7 latter has, willfully or by want of ordinary care, brought the injury
8 upon himself *or herself*. *The design, distribution, or marketing of*
9 *firearms and ammunition is not exempt from the duty to use*
10 *ordinary care and skill that is required by this section.* The extent
11 of liability in ~~such~~ these cases is defined by the Title on
12 Compensatory Relief.

13 ~~(2) Paragraph (1) shall apply to the design, distribution, and~~
14 ~~marketing of firearms and ammunition.~~

15 (b) It is the intent of the Legislature to abrogate the holdings in
16 cases such as *Vesely v. Sager* (5 Cal. 3d 153), *Bernhard v. Harrah's*
17 *Club* (16 Cal. 3d 313), and *Coulter v. Superior Court* (21 Cal. 3d
18 144) and to reinstate the prior judicial interpretation of this section
19 as it relates to proximate cause for injuries incurred as a result of
20 furnishing alcoholic beverages to an intoxicated person, namely
21 that the furnishing of alcoholic beverages is not the proximate
22 cause of injuries resulting from intoxication, but rather the
23 consumption of alcoholic beverages is the proximate cause of
24 injuries inflicted upon another by an intoxicated person.

25 (c) No social host who furnishes alcoholic beverages to any
26 person shall be held legally accountable for damages suffered by
27 ~~such~~ that person, or for injury to the person or property of, or death
28 of, any third person, resulting from the consumption of ~~such~~ those
29 beverages.

30 SEC. 2. Section 1714.4 of the Civil Code is repealed.

O

SENATE RULES COMMITTEE	AB 496
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

THIRD READING

Bill No: AB 496
 Author: Koretz (D), et al
 Amended: 4/23/02 in Senate
 Vote: 21

SENATE JUDICIARY COMMITTEE : 4-1, 5/14/02
 AYES: Escutia, Kuehl, O'Connell, Sher
 NOES: Ackerman

ASSEMBLY FLOOR : Not relevant

SUBJECT : Firearms: products liability

SOURCE : Coalition to Stop Gun Violence and the Million
 Mom March
 The Brady Campaign to Stop Gun Violence

DIGEST : This bill changes the civil liability statutes
 pertaining to firearms and ammunition as follows:

1. Repeals current Civil Code Section 1714.4, in response to the California Supreme Courts ruling in Merrill v. Navegar, Inc., 26 Cal. 4th 465 (2001), which held that an action in products liability against the manufacturer of a firearm is barred by Section 1714.4, whether the action is based on strict products liability or on negligence.
2. Expressly provides that the design, distribution or marketing of firearms and ammunition is not exempt from the general duty to use ordinary care or skill required

CONTINUED

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by Civil Code Section 1714, the statute that imposes liability in tort for intentional and negligent

actions.

ANALYSIS : Existing law makes a person liable to another for injuries caused by his or her willful or negligent acts or omissions. [Civil Code Section 1714. All code references are to the Civil Code, unless specified otherwise.]

This bill would provide that the design, distribution, and marketing of firearms and ammunition is not exempt from the duty of ordinary care and skill required by Section 1714.

Existing law provides that in a products liability action, no firearm or ammunition shall be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged. [Section 1714.4.]

Existing law further states that in applying Section 1714.4, (1) the potential of a firearm or ammunition to cause serious injury, damage or death when discharged does not make the product defective in design; and (2) injuries resulting from the discharge of the product are not proximately caused by its potential to cause injury, damage or death, but by the actual discharge of the firearm or ammunition. [Section 1714.4 (b) (1) and (2).]

Existing law excepts, from this protection given manufacturers and sellers of firearms and ammunition, a product liability cause of action based upon the improper selection of design alternatives. [Section 1714.4 (c).]

This bill would repeal Section 1714.4.

AB 496 responds to the California Supreme Court holding in Merrill v. Navegar, Inc., 26 Cal.4th 465 (2001) (hereafter referred to as Navegar) that Civil Code Section 1714.4 barred plaintiffs from maintaining an action against the manufacturer of assault weapons used by one man (Ferri) in a 1993 mass-shooting incident that killed eight people and injured six others. The court found that in the case alleged by plaintiffs, Section 1714.4 provided the

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manufacturer and seller of a firearm or ammunition immunity from liability, whether the action is based on strict products liability or on negligence. The court's 5-1 opinion authored by Justice Chin suggested that only the Legislature can change this interpretation of Section 1714.4 as the plaintiffs' counsel suggested, i.e., that Section 1714.4 applies only to products liability actions based on strict liability and not to other actions in negligence. A concurring opinion by Justice Kennard stated that it is up to the Legislature to act if its intent in enacting Section 1714.4 was other than as the court interpreted it in the Navegar case, while Justice Werdegar, in her dissent, argued that the legislative intent in enactment of Section 1714.4 left negligent design,

marketing and distribution of firearms and ammunition to be actionable as against their manufacturers and sellers.

Another case that was also before the Supreme Court [Whitfield v. Heckler & Koch, Inc. (2000), 82 Cal. App. 4th 1200] at the same time as Navegar has not yet been decided.

In Whitfield, the trial court sustained defendant manufacturers' demurrer based on, among two other grounds, the exception provided by Section 1714.4 to manufacturers and sellers in products liability cases involving firearms and ammunition. The appellate court affirmed the trial court's order sustaining defendant's demurrer. Whitfield involved an action by a police officer who was seriously injured in a shoot-out with assailants in the course of an attempted bank robbery. The assailants used high-powered assault weapons that penetrated through a police car being used as a shield during the shoot-out by the injured officer. In light of the court's decision in Navegar, however, the case is likely to be returned without further review.

This bill would repeal Section 1714.4, thereby exposing manufacturers and sellers of firearms and ammunition to products liability actions based on strict products liability or negligence. It would overturn the Navegar decision, as well as all other cases following Navegar.

The Navegar decision

Merrill v. Navegar, Inc. (supra) involved a shooting

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rampage in a high-rise office building at 101 California Street, San Francisco, where the assailant used two TEC-DC9's, each delivering 32 rounds of ammunition, and killed eight people and wounded six others before killing himself. The survivors and representatives of the victims of the shooting sued Navegar, Inc., the manufacturer of the TEC-DC9.

Related pending legislation is SB 682 (Perata).

Language identical to that in AB 496 has been amended into SB 682 (Perata). Like AB 496, SB 682 was a different bill when it was passed by the house of origin. The two bills were amended in identical fashions when the Navegar decision was handed down in August of 2001.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 5/20/02)

Coalition to Stop Gun Violence and the Million Mom March
(co-source)

The Brady Campaign to Stop Gun Violence (co-source)

Legal Community Against Gun Violence; Youth Alive!

American College of Emergency Physicians, California

Chapter
 California Coalition for Youth
 California Police Chiefs' Association
 City of Los Angeles
 County of Los Angeles
 Consumer Federation of California
 Consumer Attorneys of California
 Physicians for Social Responsibility (San Francisco Bay
 Area Chapter)
 Trauma Foundation
 Violence Prevention Coalition of Greater Los Angeles

OPPOSITION : (Verified 5/20/02)

California Rifle and Pistol Association
 National Rifle Association of America
 Alister McAlister, (former Assemblymember and author of AB
 75 that enacted Civil Code Section 1714.4)

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Safari Club International
 Outdoor Sportsman's Coalition of California
 The California Sportsman's Lobby

ARGUMENTS IN SUPPORT : According to the author, the Merrill v. Navegar, Inc. (supra) case handed down by the California Supreme Court last August necessitates passage of this bill. The decision, the author states, makes a manufacturer of guns, such as Navegar, not liable "for marketing their product, [the] TEC-DC9, to individuals who would use it in a criminal [act] even though they were aware[of] the outcome." The specific gun used by the assailant in Navegar, the TEC-DC9 (and its predecessor the TEC-9), is identified as an assault weapon under federal law [18 U.S.C. Sec. 921(a)(30)(A)(viii)] and under Penal Code Section 12276, which lists assault weapons controlled by the Roberti-Roos Assault Weapons Control Act of 1989 (AWCA).

In addition, the author cites Justice Kennard's concurring opinion and Justice Werdegar's dissenting opinion in Navegar, stating the need for the Legislature "to change current law (Civil Code Section 1714.4) in order for the Court to arrive at a different decision on the liability issue." Further cited by the author are editorials, published immediately after the Navegar decision was handed down, from three major newspapers, the Los Angeles Times, the San Francisco Chronicle and the San Jose Mercury News, "urging the Legislature to 'fix' the problem."

The Coalition to Stop Gun Violence, supporter of AB 496, states that "[t]he court's excessively broad interpretation of Civil Code Section 1714.4 gives gun manufacturers unprecedented protection against liability when their negligence results in injury. No other industry enjoys comparable protection, and, in adopting Sec. 1714.4, the Legislature did not intend to bar negligence claims against gun makers."

The Brady Campaign To Prevent Gun Violence, sponsor of the bill, calls for the repeal of Section 1714.4, "the gun industry's special liability protection" and thereby "hold industry to the same standards of responsible conduct as other consumer products sold in California? It is absurd

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that the gun industry is allowed to hide behind a special legal loophole while it designs and promotes a high-powered killing machine for use by criminals. When a company deliberately makes a weapon to appeal to criminals, they should share the blame when innocent people are hurt? The TEC-9 ads touted its 'excellent resistance to fingerprints' and 'high volume of firepower' and Navegar boasted that new reports of criminals using the TEC-9 were 'good as far as sales go.' The easily concealed TEC-9 assault weapon was equipped with military features to provide rapid-fire capability including a 32-round ammunition magazine, a barrel designed for an illegal silencer, and was promoted in magazines like 'Soldier of Fortune.' Very simply: the gun industry should abide by the same rules as everyone else."

ARGUMENTS IN OPPOSITION : The California Rifle and Pistol Association, Inc. writes: Firearms and ammunitions manufacturers should not be held liable for how individuals use their defectless[sic] products, nor should any manufacturer of any consumer product. Manufacturers can only control the design and quality of their products, not how purchasers and other individuals use them. It is the individual who should be held accountable for their own carelessness or other behavior, not the manufacturer of the defectless[sic] items they misuse. AB 496 would further promote the notion that people are not responsible, nor should they be held accountable, for their own actions. AB 496 would promote irresponsibility on the part [of] firearms and ammunition users. It is inappropriate."

AB 496 would repeal Section 1714.4. If enacted, the state of the law will return to pre-1984, when the courts decided, on a case-by-case basis, the application of various theories of liability, including products liability based on defective design, for injuries caused by the discharge of weapons.

RJG:jk 5/20/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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