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TO 4/6/99
Intent motion



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OFFICE OF THE
CITY ATTORNEY

SAMUEL L. JACKSON
CITY ATTORNEY

WILLIAM P. CARNAZZO
ASSISTANT CITY ATTORNEY

CITY OF SACRAMENTO
CALIFORNIA

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March 24, 1999

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: GUN INDUSTRY LEGISLATION

LOCATION AND COUNCIL DISTRICT: City-wide.

RECOMMENDATION: Adopt Resolution supporting US Senate Bill 686 ensuring the right of cities to sue the gun industry and opposing HR1032 eliminating the right of cities to sue the gun industry.

CONTACT PERSON: Arturo Venegas, Jr., Chief of Police, 264-5121
Jeffrey W. Gibson, Captain, 264-5771
Samuel L. Jackson, City Attorney, 264-5346

FOR COUNCIL MEETING OF: March 30, 1999

SUMMARY: On March 9, 1999, Congressman Bob Barr (Republican, Georgia), introduced House of Representatives Bill Number 1032 which prohibits cities from filing or maintaining civil liability actions against manufacturers, distributors, dealers, or importers of firearms in state or federal court. A copy of the text of this bill is attached as **Exhibit 1** to this report. On March 23, 1999, Senator Barbara Boxer (Democrat, California) introduced Senate Bill 686 to ensure that cities may continue to enjoy the right to file or maintain civil liability actions against manufacturers, distributors, dealers, or importers of firearms in state or federal court. A copy of the text of this bill is attached as **Exhibit 2** to this report.

On March 24, 1999, this City Council adopted a recommendation to authorize the City Attorney to initiate litigation against manufacturers, distributors, dealers, associations, importers or others responsible for gun violence within the limits of the City of Sacramento.

SENIOR DEPUTY CITY ATTORNEYS
RICHARD E. ARCHIBALD
SHANA S. FABER

DEPUTY CITY ATTORNEYS
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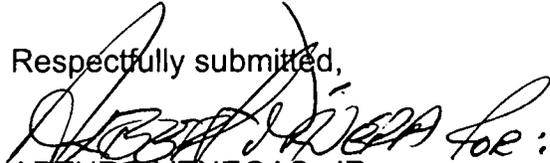
Supporting Senate Bill 686 and opposing RH1032 is consistent with the action taken by the Council on March 23, 1999, regarding gun violence within the City of Sacramento.

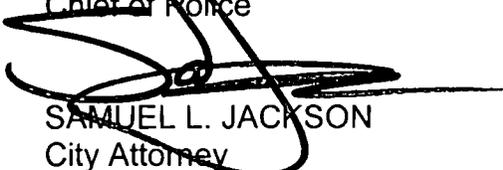
ENVIRONMENTAL CONSIDERATIONS: The subject of this report does not involve a project that requires compliance with the California Environmental Quality Act (CEQA), inasmuch as it does not involve an activity which may cause a direct or indirect change in the environment (Public Resources Code Section 21065).

POLICY CONSIDERATIONS: The approval of this recommendation is consistent with Council policy and priorities which foster revitalization of neighborhoods, reduction in crime, especially violent crimes committed with guns, reduction in safety costs associated with gun violence, maintaining the City's "home rule" authority under the City Charter, and improvement in the general quality of life in the City.

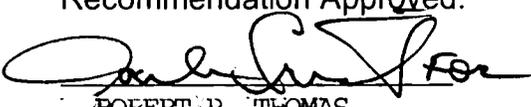
MBE/WBE: Since no goods or services are being purchased, this report does not impact the City's MBE/WBE policies.

Respectfully submitted,


ARTURO VENEGAS, JR.
Chief of Police


SAMUEL L. JACKSON
City Attorney

Recommendation Approved:


ROBERT P. THOMAS
City Manager

av:slj\gun02.rpt

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Bill 3 of 50

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Firearms Heritage Protection Act of 1999 (Introduced in the House)

HR 1032 IH

106th CONGRESS

1st Session

H. R. 1032

To prohibit civil liability actions from being brought or continued against **manufacturers**, distributors, dealers, or importers of **firearms** or ammunition for damages resulting from the misuse of their products by others.

IN THE HOUSE OF REPRESENTATIVES

March 9, 1999

Mr. BARR of Georgia (for himself, Mr. DELAY, Mr. BOUCHER, Mr. YOUNG of Alaska, Mr. GOODE, Mr. COLLINS, Mr. BARCIA, Mr. SESSIONS, Mr. BURTON of Indiana, Mrs. EMERSON, Mr. PICKERING, Mr. BASS, Mr. SWEENEY, Mr. BLUNT, Mr. HALL of Texas, Mr. NORWOOD, Mr. CHAMBLISS, Mr. ISAKSON, Mrs. CHENOWETH, Mr. HAYWORTH, Mr. SKEEN, Mr. STEARNS, Mr. LATHAM, Mr. WATKINS, Mr. LINDER, Mr. TANCREDO, and Mr. HEFLEY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit civil liability actions from being brought or continued against **manufacturers**, distributors, dealers, or importers of **firearms** or ammunition for damages resulting from the misuse of their products by others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

EXHIBIT 1

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This Act may be cited as the 'Firearms Heritage Protection Act of 1999'.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS- The Congress finds the following:

(1) Citizens have a right, under the Second Amendment to the United States Constitution, to keep and bear arms.

(2) Lawsuits have been commenced against **manufacturers** , distributors, dealers, and importers of nondefective **firearms** , which seek money damages and other relief for the harm caused by the misuse of **firearms** by third parties, including criminals.

(3) The manufacture, importation, possession, sale, and use of **firearms** and ammunition in the United States is heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National **Firearms** Act, and the Arms Export Control Act.

(4) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, marketing, distribution, manufacture, importation, or sale to the public of **firearms** or ammunition that have been shipped or transported in interstate or foreign commerce are not, and should not be, liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products.

(5) The possibility of imposing liability on an entire industry for harm that is the sole responsibility of others is an abuse of the legal system, erodes public confidence our Nation's laws, threatens the diminution of a basic constitutional right, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in America's free enterprise system, and constitutes an unreasonable burden on interstate and foreign commerce.

(6) The liability actions commenced or contemplated by municipalities and cities are based on theories without foundation in hundreds of years of the common law and American jurisprudence. The possible sustaining of these actions by a maverick judicial officer would expand civil liability in a manner never contemplated by the Framers of the Constitution. The Congress further finds that such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(b) PURPOSES- The purposes of this Act are as follows:

(1) To prohibit causes of action against **manufacturers** , distributors, dealers, and importers of **firearms** or ammunition products for the harm caused by the criminal or unlawful misuse of firearm products or ammunition products by others.

(2) To preserve a citizen's access to a supply of **firearms** and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section five of that Amendment.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) IN GENERAL- A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS- A qualified civil liability action that is pending on the date of the enactment of this Act shall be dismissed immediately by the court in which the action was brought.

SEC. 4. DEFINITIONS.

In this Act:

(1) MANUFACTURER- The term 'manufacturer' means, with respect to a qualified product--

(A) a person who is engaged in a business to import, make, produce, create, or assemble a qualified product, and who designs or formulates, or has engaged another person to design or formulate, a qualified product;

(B) a seller of a qualified product, but only with respect to an aspect of the product that is made or affected when the seller makes, produces, creates, or assembles and designs or formulates an aspect of the product made by another person; and

(C) any seller of a qualified product who represents to a user of a qualified product that the seller is a manufacturer of the qualified product.

(2) PERSON- The term 'person' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(3) QUALIFIED PRODUCT- The term 'qualified product' means a firearm (as defined in section 921(a)(3) of title 18, United States Code) or ammunition (as defined in section 921(a)(17) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(4) QUALIFIED CIVIL LIABILITY ACTION- The term 'qualified civil liability action' means a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted.

(5) SELLER- The term 'seller' means, with respect to a qualified product, a person who--

(A) in the course of a business conducted for that purpose sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a qualified product in the stream of commerce; or

(B) installs, repairs, refurbishes, reconditions, or maintains an aspect of a qualified product that is alleged to have resulted in damages.

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(6) STATE- The term 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(7) TRADE ASSOCIATION- The term 'trade association' means any association or business organization (whether or not incorporated under Federal or State law) 2 or more members of which are **manufacturers** or sellers of a qualified product.

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FAX FROM
UNITED STATES SENATOR BARBARA BOXER

SAN FRANCISCO OFFICE
1700 Montgomery Street, Suite 240
San Francisco, CA 94111
415.403.0100

DATE: 3/23/99

PLEASE DELIVER TO: Samuel L. Jackson

COPIES TO: 916 264 7455

FROM: Rich Fitzsimmons

NUMBER OF PAGES (incl. cover): 6

NOTES:

S. _____

Mrs. Boxer (for herself and _____) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To regulate interstate commerce by providing a Federal cause of action against firearms manufacturers, dealers, and importers for the harm resulting from gun violence.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Firearms Rights, Responsibilities, and Remedies Act of 1999."

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the manufacture, distribution, and importation of firearms is inherently commercial in nature;

(2) firearms regularly move in interstate commerce;

(3) firearms trafficking is so prevalent and widespread in and among the States that it is impossible to distinguish between intrastate trafficking and interstate trafficking;

(4) to the extent firearms trafficking is intrastate in nature, it arises out of and is substantially connected with a commercial transaction, which, when viewed in the aggregate, substantially affects interstate commerce;

(5) gun violence results in great costs to society, including the costs of law enforcement, medical care, lost productivity, and loss of life;

(6) to the extent possible, the costs of gun violence should be borne by those liable for them, including manufacturers, dealers, and importers;

(7) in any action to recover the costs associated with gun violence to a particular entity or to a given community, it is impossible to trace the portion of costs attributable to intrastate versus interstate commerce;

(8) the law governing the liability of manufacturers, dealers, and importers for gun violence is evolving inconsistently within and among the States, resulting in a contradictory and uncertain regime that is inequitable and that unduly burdens interstate commerce;

(9) the inability to obtain adequate compensation for the costs of gun violence results in a serious commercial distortion to a single national market and a stable national economy, thereby creating a barrier to interstate commerce;

(10) it is an essential and appropriate role of the Federal Government, under the Constitution of the United States, to remove burdens and barriers to interstate commerce;

(11) because the intrastate and interstate trafficking of firearms are so commingled, full regulation of interstate commerce requires the incidental regulation of intrastate commerce; and

(12) it is in the national interest and within the role of the Federal Government to ensure that manufacturers, dealers, and importers can be held liable under Federal law for gun violence.

(b) PURPOSE.—Based on the power of Congress in clause 3 of section 8 of article I of the Constitution of the United States, the purpose of this Act is to regulate interstate commerce by—

- (1) regulating the commercial activity of firearms trafficking;
- (2) protecting persons, organizations, businesses, and units of government from the adverse effects of interstate commerce in firearms;
- (3) establishing a uniform legal principle that manufacturers, dealers, and importers can be held liable for gun violence; and
- (4) creating greater fairness, rationality, and predictability in the civil justice system.

SEC. 3. DEFINITIONS.

In this Act:

- (1) GUN VIOLENCE.—The term "gun violence" means—
 - (A) actual or threatened unlawful use of a firearm; or
 - (B) accidental discharge of a firearm.
- (2) INCORPORATED DEFINITIONS.—The terms "firearm", "importer", "manufacturer", and "dealer", and "importer" have the meanings given those terms in section 921 of title 18, United States Code.
- (3) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
- (4) UNIT OF GOVERNMENT.—The term "unit of government" means any State, city, town, township, county, parish, village, or other general purpose political subdivision of a State.

SEC. 4. FEDERAL CAUSE OF ACTION.

(a) IN GENERAL.—Notwithstanding any other provision of Federal, State, or local law, any person, organization, business, or unit of government that has been injured by or incurred costs as a result of gun violence may bring a civil action in a Federal or State court of original jurisdiction against a manufacturer, dealer, or importer who knew or should have known that its design, manufacturing, marketing, importation, sales, or distribution practices would likely result in gun violence.

(b) REMEDIES.—In an action under subsection (a), the court may award appropriate relief, including—

- (1) actual damages;
- (2) punitive damages;
- (3) reasonable attorneys' fees and other litigation costs reasonably incurred, including the costs of expert witnesses; and
- (4) such other relief as the court determines to be appropriate.

STATEMENT OF SENATOR BARBARA BOXER
Introduction of the Firearms Rights, Responsibilities, and Remedies Act
March 23, 1999

I thank my colleagues for joining me today, and I especially thank Mayor [hopefully to come] for making the trip to be here. We are standing together—the federal government alongside our local communities—to fight the gun violence plaguing too many of America's cities.

We have talked about this before, but it is worth reiterating. Gun violence is an epidemic in America. Each year, guns cause the death of about 35,000 Americans. [chart] The number of handgun murders in this country far outpaces that of any other country—indeed, most other countries combined.

In my state of California alone, there are five times as many handgun murders as there are in New Zealand, Australia, Japan, Great Britain, Canada, and Germany combined. Yet those six countries have ten times the population of California.

The Centers for Disease Control estimates that in just four years, gun deaths will be the leading cause of injury-related death in America.

No one feels this violence more than America's cities. They are being invaded. And I do mean invaded. Consider the city of Chicago. Chicago has one of the toughest handgun control ordinances in the country. And yet, this year, the Chicago police will confiscate some 17,000 illegal weapons. City officials acknowledge that's only a fraction of the guns on the streets.

Is it any wonder? Look at this chart. [chart] It sometimes seems that there is a 7-11 on every corner, but there are only 5,500 in the United States. There are 12,300 McDonald's; 13,400 book stores; 24,200 car dealerships; 33,000 shoe stores. But there are 93,000 federal firearms licensees—those licensed to sell guns legally.

And there are now 242 million guns in this country. That's almost one for every man, woman, and child in America.

The result of this invasion of guns is that in too many American cities, it's a war zone. In fact, it's worse than a war zone. [chart] In 11 years of the Vietnam War, over 58,000 Americans died. But in the last 11 years, nearly 400,000 Americans have been killed by gunfire.

For every American who dies, another three are injured and end up in an emergency room. The cost to our health care system is estimated to be between \$1.5 billion and \$4.5 billion per year. And 4 out of every 5 gunshot victims either have no

health insurance or are on public assistance. U.S. News reported that one hospital in California—the University of California-Davis Medical Center—lost \$2.2 million over three years on gunshot victims. That means you and I and all taxpayers are paying the bills.

Many of our cities believe that the gun industry should help pay for these costs. And I believe that our cities should have their day in court. My bill does not impose anything. It does not require anything. It is designed for one purpose: to preserve local control.

The federal government should stand shoulder to shoulder with our nation's communities. Not on the front lines—that's where the brave men and women in police uniforms risk their lives every day. And for that we are forever grateful. But we should stand as the last line of defense—to help our cities be free from firearms and the chaos they cause.

We have stood together before in the fight against crime. This year, the federal government will send some \$2 billion to help local law enforcement. If local governments believe that the fight against crime is being hampered because of a mass proliferation of guns and gun violence, I believe it is in the national interest to allow them to take action in court.

So today I am introducing a bill to ensure that anyone harmed by gun violence—including our cities—has the right to sue gun manufacturers, dealers, and importers. I am not saying that the gun industry should be required to pay any particular amount of damages, and I am not advocating any particular theory that would hold the gun industry liable.

What I am saying is that the gun industry should not be exempt from the normal course of business in America. The right to redress grievances in court is older than America itself. But the NRA is now pushing legislation in many states and here in Congress to say that the gun industry should get special rights and special protections. I believe that the gun industry should be treated like everyone else.

I find it just a bit ironic. Some of the legislation that the NRA has worked so hard to defeat over the years—such as mandatory safety locks, smart technology, and product safety legislation—is the basis of some of these suits by the cities. If the NRA had let us pass such laws, they wouldn't be facing so many lawsuits today. But instead of backing these bills now, the NRA and the gun industry want to escape their responsibilities for what they are doing to America's cities—and all too often, to America's children.

I sometimes wonder if N-R-A stands for "No Responsibility to America."

It has been said that America has a love affair with guns. But we should not

//

stand idly by when that love affair turns violent. Today we stand with America's cities to say enough is enough.

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION IN OPPOSITION TO HOUSE OF REPRESENTATIVES BILL 1032 WHICH PROPOSES TO RESTRICT THE RIGHT OF CITIES TO INITIATE CIVIL LIABILITY ACTIONS AGAINST THE FIREARMS INDUSTRY

WHEREAS, on March 23, 1999, the City of Sacramento adopted a staff recommendation to initiate civil liability litigation against manufacturers, distributors, dealers, importers, associations and others responsible for compensable gun violence within the limits of the City of Sacramento; and

WHEREAS, on March 9, 1999, United States Congressman Bob Barr (Republican of Georgia) introduced HR 1032 which would prohibit cities from filing or maintaining civil liability actions against manufacturers, distributors, dealers, or importers; and

WHEREAS, the aforesaid HR 1032, if enacted, would have a direct adverse impact on the City of Sacramento and its ability to exercise its "home rule" authority under the Charter of the City of Sacramento by removing its powers to initiate civil liability litigation in certain instances.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO that:

SECTION 1. The City Council hereby opposes HR 1032 and authorizes United States Congressman Robert Matsui and Senator Barbara Boxer to list and use its name, "City of Sacramento," among those opposing said legislation.

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FOR CITY CLERK USE ONLY

RESOLUTION NO. _____

DATE ADOPTED: _____

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SECTION 2. A properly executed copy of this resolution be immediately transmitted to Congressman Matsui and Senator Barbara Boxer by the Mayor.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY.

RESOLUTION NO. _____

DATE ADOPTED: _____

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