

AKTI Supports Senate Bill S659 - Protection of Lawful Commerce in Arms Act

At the urging of Larry Keane, legal counsel for the National Shooting Sports Foundation (NSSF), AKTI sent the following letter to U.S. Senators Larry Craig and Max Baucus, co-sponsors of S659 which is intended to stop so-called "junk lawsuits" against gun manufacturers. A number of cities have launched such suits (most of which have already been dismissed). However, they are extremely costly to defend and to prosecute. If a city or state pursues such a suit and loses, few citizens understand that those taxpayer dollars spent to prosecute could have been used for some other useful purpose. But attorneys who pursue such lawsuits are gambling that they will win (a big payday) or that, at the very least, the lawsuit will convince the company to settle out of court (a smaller payday).

AKTI supported this bill (as did a number of other national trade and commerce organizations) because such lawsuits have clearly been used to harass and intimidate companies. If criminals can wrongly use a product, any product, to commit a threatening, violent or predatory act, then virtually any company is at risk for litigation and potential bankruptcy.

Dear Senators Craig and Baucus:

The American Knife & Tool Institute, which represents all segments of the U.S. knife industry, supports the passage of Senate Bill S659 - the Protection of Lawful Commerce in Arms Act.

Manufacturers who make quality products and tools that perform safely when used as intended cannot be blamed for the intentions or the actions of anyone who uses them wrongly, recklessly or harmfully. Criminals who use a firearm in the commission of a crime should be prosecuted to the full extent of the law.

If cities and states can blame gun makers for criminal misuse of their lawfully sold products, they will start suing knife companies because a criminal chose a knife to harm or threaten a victim.

Congress must enact this law and other common sense legal reforms to restore integrity and fairness to our judicial system. Junk lawsuits against firearms manufacturers have wasted millions of taxpayer dollars, threaten to bankrupt an entire law-abiding industry that is already heavily regulated, and would eliminate thousands of important manufacturing jobs.

*Yours truly,
(Signed)*

*James Furgal, President -
Camillus Cutlery Company
President - AKTI*

As of presstime this bill has been tabled until early 2004. But according to a spokesperson for NSSF, they are "very optimistic about passage." AKTI also thanks those individuals who sent individual letters to the co-sponsors and their state Senators. Lawmakers pay attention when their constituents take time to express their views.

CALIFORNIA JUDGE RULES BENCHMADE FOLDER IS NOT A SWITCHBLADE

First Judicial Decision in California Dealing with AKTI Legislation

By Chris Micheli

After two days of testimony from the author and arresting officer, a Sacramento County Superior Court judge issued a verbal ruling in *People v. Miller* on October 29, 2003 that a Benchmade Model 910 Striker was not a switchblade under California Penal Code Section 653k because it fell within the one-handed opening knife exemption language drafted by AKTI in 2001. The district attorney dismissed the charges. However, the prosecution may appeal, and the judge suggested the Legislature should modify the exemption language so it is clearer.

Note: California's switchblade law was modified in SB 274, introduced by State Senator Betty Karnette, which was signed into law in 2001. The bill was the result of extensive negotiations between the American Knife & Tool Institute (AKTI) and the California District Attorneys Association (CDA).

Amendments to Section 653k by SB 274 intended to exempt knives under the switchblade law if they contain a detent or similar mechanism. Such mechanisms ensure there is some resistance that prevents the knife from being easily opened with a flick of the wrist.

Most knives being confiscated by law enforcement are "junk knives" that do not have such resistance mechanisms. This is why junk knives are easily opened, often with the flick of a wrist

California Ruling

(similar to a gravity knife), rather than through the use of the thumb to rotate the blade into its open and locked position.

As a result of the enactment of SB 274, effective January 1, 2002, California Penal Code Section 653k reads as follows (new language from SB 274 is in italics and strikeout):

Every person who possesses in the passenger's or driver's area of any motor vehicle in any public place or place open to the public, carries upon his or her person, and every person who sells, offers for sale, exposes for sale, loans, transfers, or gives to any other person a switchblade knife having a blade two or more inches in length is guilty of a misdemeanor.

For the purposes of this section, "switchblade knife" means a knife having the appearance of a pocketknife and includes a spring-blade knife, snap-blade knife, gravity knife or any other similar type knife, the blade or blades of which are two or more inches in length and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever. "Switchblade knife" does not include a knife that is ~~designed to open~~ opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade, *provided that the knife utilizes a detent or other mechanism that provides resistance that must be overcome in opening the blade, or biases the blade back toward its closed position.*

For purposes of this section, "passenger's or driver's area" means that part of a motor vehicle which is designed to carry the driver and passengers, including any interior compartment or space therein.

As an important part of the enactment of SB 274, AKTI was able to secure the following statement of legislative intent by Senator Karnette. She published the following letter in the Senate Daily Journal on July 18, 2001:

The purpose of this letter is to express the Legislature's intent in enacting my SB 274, which makes amendments to Penal Code Section 653k, dealing with switchblade knives.

Section 653k makes it a misdemeanor

"Although some one-handed opening knives can be opened with a strong flick of the wrist, so long as they contain a detent or similar mechanism that provides some resistance to opening the knife, then the exemption is triggered."

— Senator Betty Karnette

to sell or possess upon one's person a switchblade in California. The statute was enacted in 1957 and provides a length definition of a switchblade knife. In 1996, AB 3314 (Ch. 1054) created an exemption for one-handed folding knives. Recently, there has been concern that the language of the exemption is broadly interpreted to apply to knives that are essentially switchblades, but that are designed to fall under the language of the exemption.

In order to ensure that only legitimate one-handed opening knives are covered, SB 274 narrows the language to only allow knives to fall under the exemption from the switchblade law if that one-handed opening knife contains a detent or similar mechanism. Such mechanisms ensure there is a measure of resistance (no matter how slight) that prevents the knife from being easily opened with a flick of the wrist. Moreover, a detent or similar mechanism is prudent and a matter of public safety as it will ensure that a blade will not inadvertently come open.

Although some one-handed opening knives can be opened with a strong flick of the wrist, so long as they contain a detent or similar mechanism that provides some resistance to opening the knife, then the exemption is triggered. These knives serve an important utility to many knife users, as well as firefighters, EMT personnel, hunters, fishermen, and others.

The exemption created in 1996 was designed to decriminalize the legitimate use of these extremely functional tools by law-abiding citizens. SB 274 is not intended to interfere with those knife owners and users. The amendments to Section 653k accomplish this important purpose by establishing more objective criteria for determining whether a knife meets the intended exemption to the switchblade law.

— BETTY KARNETTE, 27th District

Prior to the case being tried before a jury, the defense filed several preliminary motions arguing that the search and seizure of the defendant was improper, and that the knife at issue was not, in fact, a banned switchblade under state law.

On the first day of testimony, the author was called by the defense and, based upon his credentials, was certified as an expert witness by the judge to discuss the legislative history and intent behind California's switchblade law, and to render an expert opinion as to whether the defendant's knife was indeed a switchblade or whether it fell under the one-handed opening knife exemption language. On the second day, the arresting officer, a Sacramento Police Department Sergeant, provided his basis for arresting the defendant and why he believed that the Benchmade knife in question was a switchblade. The author was called again as a rebuttal witness.

The Assistant Public Defender and the Assistant District Attorney presented their respective oral arguments why the Benchmade Model 910 was or was not a switchblade. While the prosecutor cited four cases for the judge to review, none of those appellate court decisions dealt with the one-handed opening knife exemption language. The judge took the matter under submission and rendered his verbal decision the following morning.

He concluded the Benchmade knife does not fall under the switchblade law because, instead, it meets the language of that exemption. Specifically, this knife had a thumb stud and a detent that provided "some level of resistance." He opined that the statute itself "does not give us guidance on the level of resistance that is required." However, relying upon the words of the statute and looking to the legislative intent statement submitted by the author of AKTI's legislation in 2001, Senator Betty Karnette, the judge found that only a small level of resistance is required, "no matter how slight."

Therefore, considering all of this

AKTI monitors legislation and regulations affecting knives in all 50 states through the StateNet service. However, members are urged to stay alert to potential knife issues at the city and county level and to report these issues to AKTI.

language together, the Benchmade knife could not be opened with “an easy flick of the wrist.” In fact, on several occasions, the judge himself attempted to open this knife without use of the thumb stud and decided that he needed to “use strength to open it.” He described in court that he used “a very strong movement” in order to open the knife without the thumb stud.

He also set forth a definition of “resistance,” although one is not provided in the statute. He found the word to mean “a force that limits or retards movement.” As such, because of the detent, the Benchmade Model 910 has resistance as required by the statutory language. Therefore, this provision of the statute was met with this knife.

The judge also offered into the record that the one-handed opening knife exemption language is “sufficiently vague” that he is required to narrowly construe the statute. Reading the language of Penal Code Section 653k, he found “this knife is not clearly covered by the statute” and must be deemed to fall outside of the switchblade law. He also made a determination that the exemption language is “not so vague that it is unenforceable.”

In addition, the judge found that, without the exemption language, “it would be easy to classify this knife as a switchblade knife” because it could be opened with a “flip of the wrist,” which is one of the determinations in finding that a knife is a switchblade. He did appear to have some concern with the exemption language. For example, he said that he is not sure it is a “wise” decision, but the Legislature “has gone to great lengths in this statute” to provide the exemption for one-handed opening knives. As a result, he felt bound to find this knife to fall outside of the switchblade law. “They (i.e., the Legislature) have made this distinction and I am stuck with this determination.”

Finally, the judge suggested that the prosecution might want to appeal his decision, which they have 30 days to do. He also “calls this matter to the attention of the Legislature” because the language of the statute is “ambiguous and unclear” and it needs to be addressed. The judge will issue a Minute Order that sets forth in writing his legal analysis and conclusion. This case could also be cited in other jurisdictions around the state on how to interpret Section 653k.

There is some concern, due to the displeasure of the police officer and district attorney that this knife was found to not be a switchblade, that they will seek changes to the one-handed opening knife exemption in the switchblade law. AKTI will closely monitor this situation in the

California Legislature and protect legitimate knife users so they continue to possess and use their one-handed folders. AKTI is also attempting to secure a “DOJ Directive,” which would provide guidance to peace officers in California on how to interpret and apply the switchblade law.

Update ... November 21, 2003

I am very pleased to report that the Sacramento Superior Court confirmed the dismissal of charges against Max Miller.

The Assistant DA explained she had contacted CDAA and they had sent out a statewide e-mail alert for assistance. She received comments from a number of DA Offices. She was referred to me, as well as Stanislaus Co. Deputy DA David Huang,

who does training seminars on California knife laws to other DAs.

Mr. Huang told the ADA he agreed with my previous testimony. Therefore, no further evidence will be provided by the prosecution.

As a result, the judge is willing to dismiss the case and affirm his previous ruling (i.e., that this Benchmade model was not a switchblade). The judge, however, still urged that the Legislature revisit this statute.

© **Chris Micheli, 2003.** Chris Micheli is an attorney and registered lobbyist for the Sacramento governmental relations firm of Snodgrass & Micheli, LLC (916-447-2251). He represents the American Knife & Tool Institute in California.

AKTI Celebrates Sixth Anniversary at the 2004 S.H.O.T. Show

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Indiana Considering Sensible Knives-in-School Law

On December 2, 2003, Indiana State Senator Merritt introduced Senate bill S91 that would provide, in part, "... A student may not be expelled for possessing a knife on school property" ... where there may be a legitimate reason, sanctioned by the school, for having the knife.

These reasons include ... "(A) the

knife is provided by the school corporation; or (B) possession of the knife is permitted by the school corporation; and (2) if, at the time of possession, the knife is being used for a purpose authorized by the school corporation."

The bill further provides that a student may be expelled for not more than

one year for possessing [apparently, any other] knife on school property. If passed, it will become effective on July 1, 2004.

S91 was read for the first time on December 2, 2003, and referred to the Senate Committee on Education and Career Development. AKTI will follow the bill's progress.