



State and Local Law Compliance is Essential to E-Commerce Success in Sale of Firearms and Related Accessories

09.25.2015

BY: CAMDEN R. WEBB & KATHERINE E. WHITNEY*

Selling firearms and related accessories through e-commerce poses a unique challenge to vendors selling products online. Complex compliance issues are present in each transaction because every item must be sold in compliance with state and local laws in effect in each jurisdiction where any participant in the transaction is located. If a firearm, a magazine or ammunition is sold or shipped in violation of a state or local law, the e-commerce vendor facilitating the transaction faces serious consequences including loss of the civil immunity provided by the Protection of Lawful Commerce in Arms Act (?PLCAA?), revocation of its Federal Firearms License and even potential criminal liability. Laws prohibiting the possession and sale of firearm accessories vary wildly from state to state and change frequently. When a state or local law changes, an e-commerce vendor's business practices must change, too.

Online stores provide convenience for customers and retailers alike, but the web of restrictions in certain locations may create risks that significantly outweigh the commercial benefit of doing business in that locale. Many states prohibit the sale of certain firearms components and accessories (most commonly magazines above a stated capacity and various types of ammunition). Some state laws also demand compliance with additional procedures like licensing, purchaser waiting periods, and more expansive background checks. As a result, many e-commerce vendors do not sell in states with onerous laws (i.e., California, Colorado, Connecticut, Washington D.C., Hawaii, Maryland, Massachusetts, New Jersey and New York), choosing instead to sell only in states with fewer restrictions.

Laws affecting e-commerce vendors in the firearms industry commonly include prohibitions against so-called ?large capacity magazines? and armor piercing or incendiary ammunition. Eight states have magazine bans which make the sale, purchase or possession of magazines (or a combination thereof) capable of holding more than 10 rounds (15 in Colorado) a criminal act. Municipal laws in select cities in Illinois, New York and California also ban magazines with a capacity greater than 5, 10, 15, 16, 17 or 35 rounds, depending on the jurisdiction. As of September 19, 2015, merely possessing a magazine

with a capacity greater than 10 rounds within Los Angeles is a crime. Los Angeles's new ordinance is similar to bans in effect in San Francisco and Sunnyvale, but different from the state law which only prohibits the manufacture, importation, and sale of the same magazines. Truly, the substance of these laws varies significantly from one jurisdiction to the next. Yet, in every jurisdiction, failing to comply with a state or local law implicates federal laws and greatly increases a seller's potential liability.

The applicable state and local laws can carry hefty fines and prison sentences, not to mention the federal penalties for selling products in violation of state law (which include disciplinary action by the ATF). By way of example, violating Colorado's law against the sale or transfer of a "large-capacity magazine" is a felony punishable by a fine up to \$100,000.00 and a three year prison sentence. Selling prohibited ammunition in San Francisco could earn a vendor six months in the county jail and a \$1,000.00 fine. Running afoul of Connecticut's magazine capacity law is a felony offense punishable by one to five years in prison and up to a \$5,000.00 fine.

Federal implications can also be serious. For example, the PLCAA protects sellers of firearms, firearms components, and ammunition against civil lawsuits if someone uses their products in a crime. However, this protection is lost if a seller "knowingly violated a State or Federal statute applicable to the sale or marketing of the product" and the violation was the proximate cause of a person's injury. 15 U.S.C. § 7903(5)(A)(iii). State law compliance therefore becomes a civil liability issue.

Perhaps of more concern is the federal Gun Control Act's criminalization of non-compliance with state and local laws. Under 18 U.S.C. § 923(b)(2), it is a crime for any licensed seller to make a sale of a firearm to a person in a state where the purchase or possession of the firearm by that person would violate state law or any published ordinance. While this statute only applies to sales of firearms, and not ammunition or accessories, sellers of ARs and other modern sporting rifles should beware—certain states now outlaw "assault rifles," and sales in violation of these states' laws could be considered a federal crime.

E-commerce sales present a great opportunity for industry members to expand sales and reach markets that are out of reach with brick-and-mortar operations. But with the patchwork quilt of firearms laws across the country, how does an e-commerce vendor ensure compliance? A few ways to avoid common compliance mistakes include:

- *Identify and avoid high-risk transactions.* An e-commerce vendor can reduce its risk by using internal controls to pinpoint transactions that are initiated from or would be delivered to locations where certain sales are restricted. By taking advantage of available technology, an e-commerce vendor can ensure that it is not participating in prohibited activities.
- *Develop a sales strategy that is tailored to sales in specific jurisdictions.* Many e-commerce vendors have developed sound strategies that simply forgo sales in jurisdictions that are overly hostile and do not present good sales opportunities. For example, many e-commerce vendors have ceased sales into Maryland due to its recent "assault rifle" and magazine bans. However, many of those same vendors continue to sell to California customers because California is a much larger and more profitable market. This reflects sophisticated vendors weighing regulatory compliance costs against the benefits of a good market.

- *Place the burden of compliance, to the greatest extent allowed, on the customer.* As addressed in a **related publication**, there are a number of ways that an e-commerce vendor can structure sales so that the customer is largely responsible for legal compliance. Vendors still must comply with laws where they sell, but customers can and should take on responsibility for compliance as well.

When it comes to e-commerce, State and local laws can be complicated and require careful review. Accordingly, it is crucial that a vendor consult with counsel when developing and implementing sales strategies for firearms components, accessories and ammunition sold in the electronic marketplace.

**Associate, Messner Reeves*

Related People

- Camden R. Webb ? 919.981.4021 ? crwebb@williamsmullen.com

Related Services

- Firearms Industry
- Litigation
- ATF Compliance and Enforcement