



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

July 27, 2015

ATTORNEY GENERAL OPINION NO. 2015-14

William R. Halvorsen
Chase County Attorney
P.O. Box 637
Cottonwood Falls, KS 66845

Re: Crimes and Punishments—Crimes Against the Public Safety—Criminal Use
of Weapons

Unfair Trade and Consumer Protection—Manufacturers of Firearms,
Firearms Accessories, Ammunition—Second Amendment Protection Act;
Personal Firearms, Accessories and Ammunition Manufactured in Kansas

Synopsis: The defense of compliance with the National Firearms Act (NFA) is available to a person in possession of a firearm sound suppressor that is manufactured in Kansas and remains within Kansas state borders. State law requires a person to comply with the NFA if he or she wishes to lawfully possess *any* firearm sound suppressor in Kansas, including those that are manufactured in Kansas and remain within Kansas state borders. Cited herein: K.S.A. 2014 Supp. 21-6301, as amended by L. 2015, Ch. 16, § 2; 50-1201; 50-1203; 50-1204; 50-1206; 26 U.S.C. § 5845.

* * *

Dear Mr. Halvorsen:

As Chase County Attorney, you ask for our opinion concerning the interaction of two provisions of Kansas law related to the possession of certain firearm accessories. Specifically, you ask whether K.S.A. 21-6301(h) remains available as a defense to a person charged with possession of a Kansas-manufactured firearm sound suppressor in light of the provisions of the Second Amendment Protection Act.¹ You also ask whether

¹ K.S.A. 2014 Supp. 50-1201 *et seq.*

such a person must be in compliance with the federal National Firearms Act (NFA)² in order to assert that defense.

Under K.S.A. 2014 Supp. 21-6301(a)(4), as amended by L. 2015, Ch. 16, § 2, it is generally unlawful to possess a firearm sound suppressor in Kansas.³ However, K.S.A. 2014 Supp. 21-6301(h), as amended by L. 2015, Ch. 16, § 2, states that this provision of criminal law “shall not apply to or affect” any person or entity in compliance with the NFA. In other words, a person may possess a firearm sound suppressor without violating Kansas law if that person is in compliance with the NFA; otherwise, such possession is unlawful.

The Second Amendment Protection Act (“Act”), enacted in 2013,⁴ exempts from federal regulation all firearms, firearms accessories and ammunition that are manufactured in Kansas and remain within Kansas state borders.⁵ K.S.A. 2014 Supp. 50-1204(a) states:

A personal firearm, a firearm accessory or ammunition that is manufactured⁶ commercially or privately and owned in Kansas and that remains within the borders of Kansas is not subject to any federal law, treaty, federal regulation, or federal executive action, including any federal firearm or ammunition registration program, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory or ammunition that is manufactured commercially or privately and owned in the state of Kansas.

A firearm sound suppressor is considered a firearm accessory for the purposes of the Act.⁷ Therefore, under the Act, a firearm sound suppressor that is manufactured in Kansas and remains within the borders of Kansas (which we will refer to as a “Kansas suppressor” in this opinion) would not be subject to any federal law, including the NFA.

Given the above statutes, may a person who is charged with violation of K.S.A. 2014 Supp. 21-6301(a)(4), as amended by L. 2015, Ch. 16, § 2, for possession of a Kansas suppressor, nonetheless assert compliance with the NFA as a defense? We believe the answer is yes.

² 26 U.S.C. § 5801 *et seq.* Among other things, the NFA provides for the taxation, registration and identification of firearms. A “silencer” is considered a firearm for the purposes of the NFA. See 26 U.S.C. § 5845(a)(7).

³ “Criminal use of weapons is knowingly . . . possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm.”

⁴ L. 2013, Ch. 100.

⁵ For the purposes of this opinion we assume that the provisions of the Act exempting such firearms, firearm accessories and ammunition from any federal law or regulation are valid.

⁶ Under the Act, “manufacture” means “to assemble using multiple components to create a more useful finished product.” See K.S.A. 2014 Supp. 50-1203(c).

⁷ K.S.A. 2014 Supp. 50-1203(b).

Although the Act purports to render all federal laws, including the NFA, inapplicable to Kansas suppressors, it does not prohibit a person from *voluntarily* complying with the NFA. Therefore, a person who possesses a Kansas suppressor may choose to comply with the NFA with respect to that suppressor.

Furthermore, we believe that *Kansas* law requires a person to comply with the NFA if he or she wishes to lawfully possess any firearm sound suppressor in Kansas, including Kansas suppressors. By its plain language, the Act only prohibits the enforcement of *federal* law in Kansas, but does not disturb *state* criminal law in any way.

NFA compliance is required by *state* law in order to qualify for a defense under K.S.A. 2014 Supp. 21-6301(h), as amended by L. 2015, Ch. 16, § 2, regardless of whether the firearm sound suppressor falls within the parameters of the Act or is imported from another state. Therefore, a person could not rely upon the Act as a defense against a charge of unlawful possession of a Kansas suppressor because the Act does not foreclose prosecutions under state law.

We also note that the Act provides that state officials may not “enforce or attempt to enforce” federal firearms laws with respect to firearm accessories that are manufactured in Kansas and remain in Kansas.⁸ In our opinion, a prosecution for violation of K.S.A. 2014 Supp. 21-6301(a)(4), as amended by L. 2015, Ch. 16, § 2, including any attendant argument concerning the availability of the defense of NFA compliance, does not constitute an effort to enforce federal firearms laws in violation of the Act. Rather, any discussion of NFA compliance in such a circumstance would concern the enforcement of state law.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

DS:AA:SF:sb

⁸ K.S.A. 2014 Supp. 50-1206(b).