

# National Pawnbroker

Official Publication of the National Pawnbrokers Association

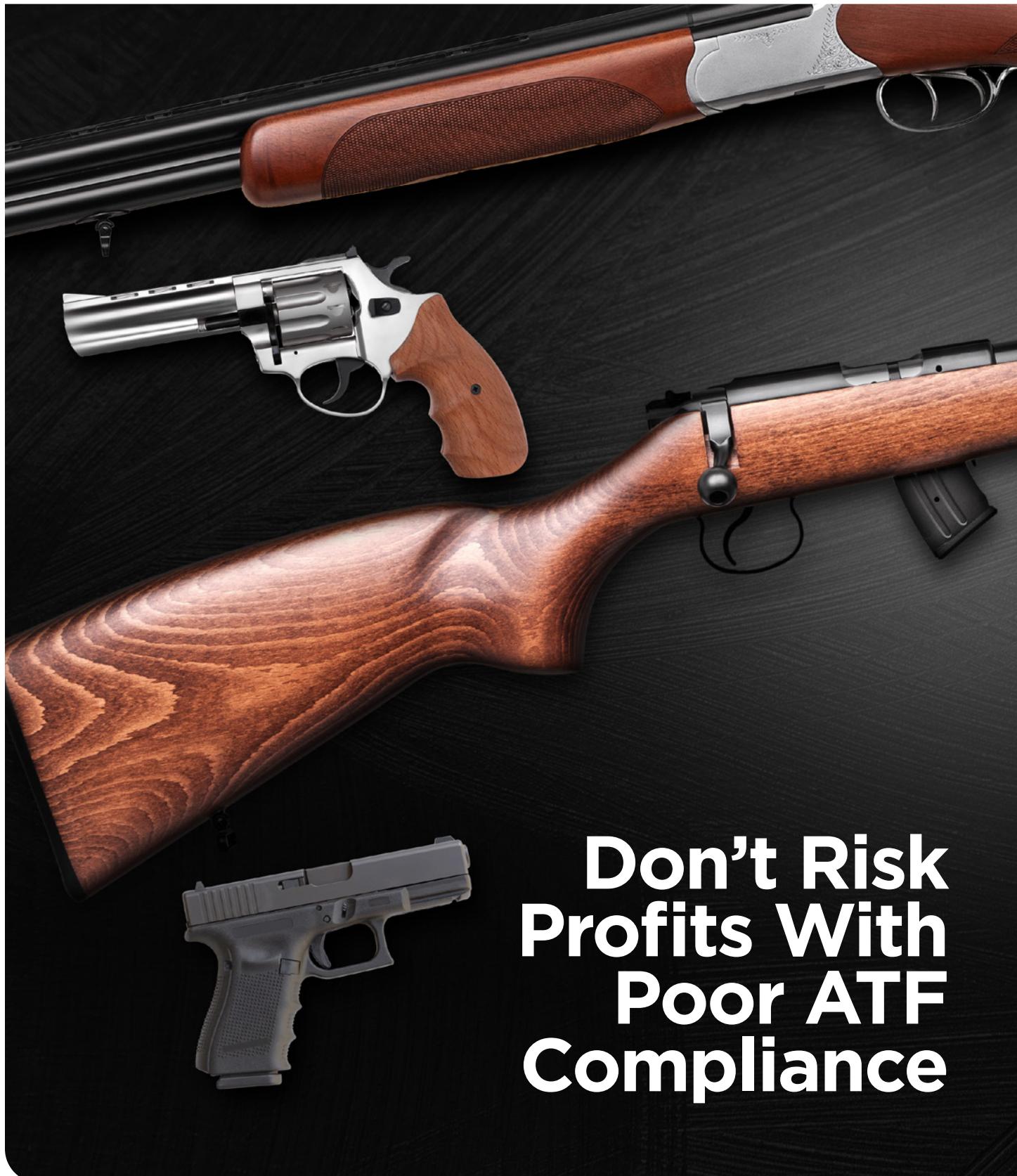
SUMMER 2020



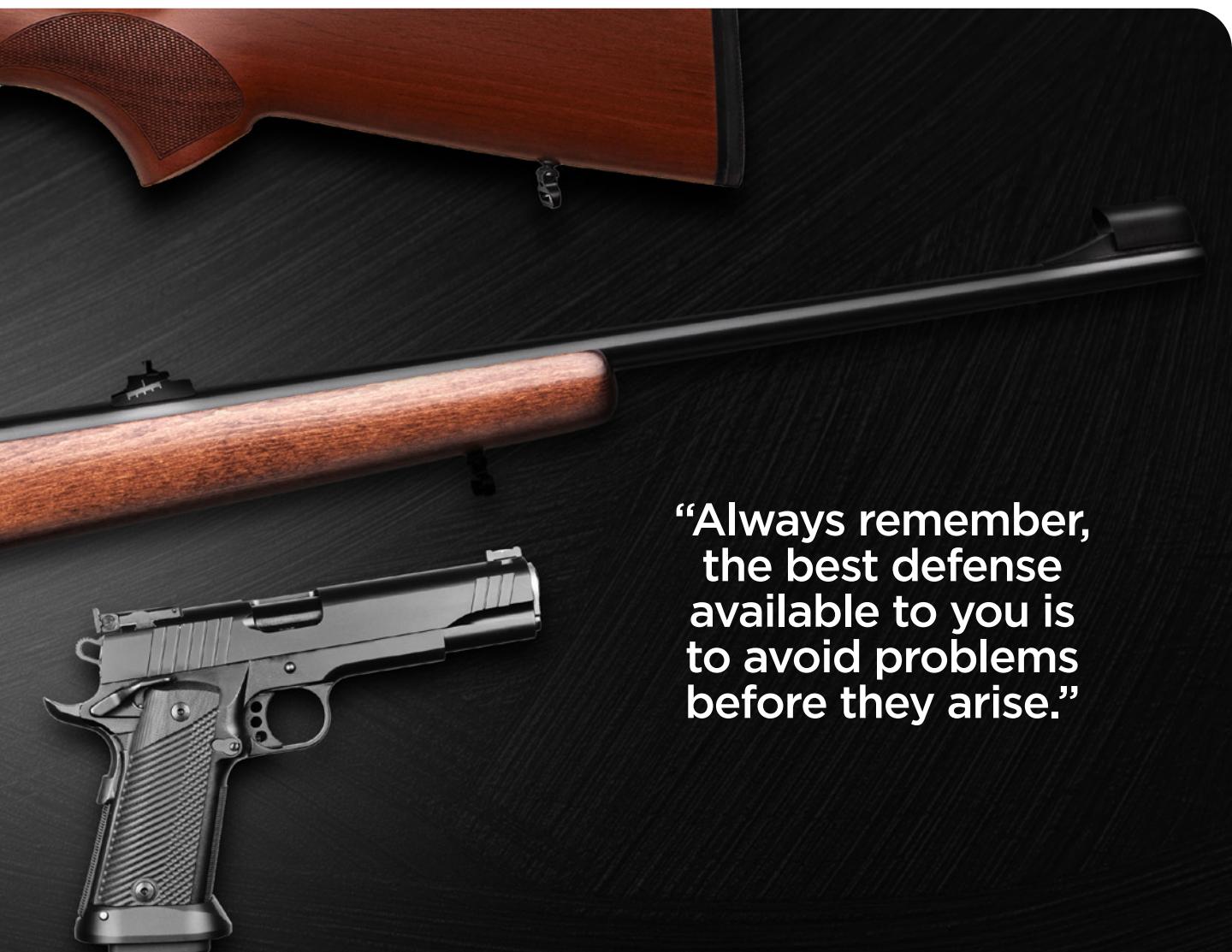
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**Don't Risk  
Profits With  
Poor ATF  
Compliance**



**“Always remember,  
the best defense  
available to you is  
to avoid problems  
before they arise.”**

By Joseph Kavan and Michael Brown, Kutak Rock LLP

**C**ompliance with the Gun Control Act (GCA) and federal regulations isn't just a goal – it's the law, and compliance failures can, and have, resulted in revocation of licenses, and may result in civil fines. However, you shouldn't need to worry about an ATF inspection if you take compliance seriously and invest the time to be prepared.

The ATF tries to inspect every Federal Firearms License (FFL) at least once every five years, so if you have not yet been inspected – it will happen soon. In 2018, there were over 10,000 compliance inspections performed by ATF. 42.4% of those inspections revealed no violations. However, nearly 11% of these inspections resulted in the issuance of a

Warning Letter, and nearly 4% of those resulted in a Warning Conference, a surrender of license in lieu of suspension or a revocation of license.

There are several simple steps you can take to ensure success when your inspection is conducted. It begins with inventory control and absolute daily reconciliation of your inventory to your Acquisition and Disposition Record. Know that your inspection will include a physical inventory of all firearms on hand. Verify that acquisitions and dispositions are correctly and timely recorded in your Bound Book. Don't let these transactions stack up with the thought that you will get to them later. Do it before you go home at night. Review Form 4473 while the customer is in your store, and have at least two people review the sale and the 4473 to identify and rectify any errors or omissions you find. Revise and refresh policies and training as often as needed to keep your staff up-to-date and working in compliance with the law.

Enlist the aid of consultants to help you maintain compliance as part of your general business plan, if necessary. Do mock inspections or hire a consultant to conduct one for you. You will be surprised what it can reveal to you before the ATF arrives to conduct its inspection.

#### **HOW ELSE MIGHT YOU BECOME INVOLVED IN FIREARMS-RELATED LITIGATION?**

A firearm may be discharged in your building or on your premises. Such discharges can be accidental



**“The Protection of Lawful Commerce in Arms Act (PLCAA) was enacted to provide firearms dealers protections from certain claims for damages and other relief arising from the misuse of firearms by others.”**

or intentional, or even be due to product defect. Strict policies requiring verification that every firearm is unloaded prior to allowing a customer to handle the firearm is a great deterrent and starting point, but don't stop there. Customers can bring a firearm into your store for several reasons, and you need to remain vigilant for the risks presented by the presence of these firearms as well.

You may be sued because of injuries sustained as a result of a firearm that you sold. These suits typically involve claims of negligence on your part in how the sale was conducted. Legal concepts, such as negligent entrustment or negligence per se, will be claimed against you.

The Protection of Lawful Commerce in Arms Act (PLCAA) was enacted to provide firearms dealers protections from certain claims for damages and other relief arising from the misuse of firearms by others. It does not provide absolute immunity. Savvy plaintiffs will work to ensure their allegations fall within one of the enumerated exceptions to the PLCAA.

Strong policies and strict adherence to them is essential to minimizing your exposure to such risks. You need to employ best practices and robust employee training. Keep in mind that training needs to be ongoing in order to be effective. Investing resources into strict adherence to the policies will pay dividends when the ATF comes to inspect you or when you need to defend that lawsuit. Those strong policies and consistent execution will help you defend against most claims you might face and invoke the PLCAA protections.

Remember that compliance extends to all aspects of your business. Don't overlook your loan programs when crafting your policies. We recommend having an open discussion regarding the redemption process before accepting a firearm as collateral for a loan. In particular, make sure your customer understands that a NICS "proceed" will be required before you are allowed to transfer the firearm back to them. In addition, you should have a policy, if not required by the laws of your state, that pawn tickets are not transferrable. You may elect to allow the customer some period of time, for example sixty days, after receiving a NICS "delay" or "deny" result so they may seek to resolve the issue giving rise to the negative result, but that you will require

## "Remember that compliance extends to all aspects of your business."

a clear "proceed" before you can transfer the firearm back. Other options include offering to purchase the firearm from them.

These concepts are by no means exhaustive, but there are many resources available to you that can be implemented to assist you in crafting a robust training system. Always remember, the best defense available to you is to avoid problems before they arise. An ounce of prevention, as the saying goes, applies in firearms transactions, plus, it is the law. Maintaining compliance is more than just your legal obligation; it's good business. Once you get in the habit of training

your employees, updating their training, and double-checking your documentation, it becomes second-nature, and you will be well on your way to a successful and profitable firearms business. 

## KUTAKROCK

Joe Kavan is a partner and chair of the firm's Firearms Industry Practice Group; his office is in Omaha, NE. Michael Brown is a partner and member of the Firearms Industry Practice Group and his office is in Kansas City, MO. Kutak Rock LLP is a national law firm with over 550 professionals in 18 offices and is the only AmLaw 200 law firm with a dedicated firearms industry practice group. For more information, visit [kutakrock.com](http://kutakrock.com).

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