

STATE OF NEW YORK

7642

2023-2024 Regular Sessions

IN SENATE

August 23, 2023

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law, in relation to possession of a firearm, rifle or shotgun while under the influence of alcohol or drugs; and to repeal subdivision 3 of section 265.01 of such law relating to criminal possession of a weapon in the fourth degree

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 80.05 of the penal law, as amended
2 by chapter 669 of the laws of 1984, is amended to read as follows:

3 1. Class A misdemeanor. A sentence to pay a fine for a class A misde-
4 meanor shall be a sentence to pay an amount, fixed by the court, not
5 exceeding one thousand dollars, provided, however, that a sentence
6 imposed for a violation of:

7 (a) section 215.80 of this chapter may include a fine in an amount
8 equivalent to double the value of the property unlawfully disposed of in
9 the commission of the crime; and

10 (b) subdivision twelve of section 265.01 of this chapter may include a
11 fine, fixed by the court, not exceeding ten thousand dollars.

12 § 2. Section 265.00 of the penal law is amended by adding a new subdi-
13 vision 36 to read as follows:

14 36. "Drug" means any controlled substance listed in section thirty-
15 three hundred six of the public health law.

16 § 3. Subdivision 3 of section 265.01 of the penal law is REPEALED.

17 § 4. Subdivisions 4, 5, 6, 7 and 8 of section 265.01 of the penal law,
18 subdivisions 4, 5, 6 and 7 as amended by chapter 1 of the laws of 2013,
19 subdivision 8 as amended by chapter 520 of the laws of 2021, are amended
20 and a new subdivision 12 is added to read as follows:

21 (4) He or she possesses a rifle, shotgun, antique firearm, black
22 powder rifle, black powder shotgun, or any muzzle-loading firearm, and
23 has been convicted of a felony or serious offense; or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13121-01-3

(5) He or she possesses any dangerous or deadly weapon and is not a citizen of the United States; or

(6) He or she is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00 of this article, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction[+]; or

(7) He or she knowingly possesses a bullet containing an explosive substance designed to detonate upon impact[+]; or

(8) Such person possesses any armor piercing ammunition with intent to use the same unlawfully against another[+]; or

(12) (a) He or she possesses a firearm, rifle or shotgun outside of his or her home while:

(i) he or she is in an intoxicated condition; or

(ii) he or she has .08 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to section 265.70 of this article; or

(iii) his or her ability to safely possess such firearm, rifle or shotgun is impaired by consumption of alcohol; or

(iv) his or her ability to safely possess such firearm, rifle or shotgun is impaired by use of any drug; or

(v) his or her ability to safely possess such firearm, rifle or shotgun is impaired by the combined influence of drugs or of alcohol and any drug or drugs.

(b) A person may be convicted of a violation of subparagraph (i), (ii) or (iii) of paragraph (a) of this subdivision, notwithstanding that the charge laid before the court alleged a violation of subparagraph (i) or (ii) of paragraph (a) of this subdivision, and regardless of whether or not such conviction is based on a plea of guilty.

§ 5. Subdivisions 9 and 10 of section 265.01 of the penal law, subdivision 9 as amended by chapter 149 of the laws of 2022, subdivision 10 as amended by chapter 94 of the laws of 2022, are renumbered subdivisions 10 and 11 and are amended to read as follows:

(10) Such person is not licensed as a gunsmith or a dealer in firearms pursuant to section 400.00 of this chapter and, knowing it is a ghost gun, such person possesses a ghost gun, provided that a person shall not be guilty under this subdivision when he or she (a) voluntarily surrenders such ghost gun to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) for a period of six months after the effective date of this section possesses a ghost gun prior to serialization and registration of such ghost gun pursuant to section 265.07 of this article[+]; or

(11) Such person is not licensed as a gunsmith or dealer in firearms pursuant to section 400.00 of this chapter and, knowing it is an unserialized frame or receiver or unfinished frame or receiver, such person possesses an unserialized frame or receiver or unfinished frame or

receiver, provided that for a period of six months after the effective date of this subdivision, a person shall not be guilty under this subdivision when such person: (a) voluntarily surrenders such unserialized frame or receiver or unfinished frame or receiver to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) possesses such unserialized frame or receiver or unfinished frame or receiver prior to serialization of such unserialized frame or receiver or unfinished frame or receiver in accordance with the requirements imposed on licensed importers and licensed manufacturers pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto, except for antique firearms as defined in subdivision fourteen of section 265.00 of this article, as added by chapter nine hundred eighty-six of the laws of nineteen hundred seventy-four, or any firearm, rifle or shotgun manufactured prior to nineteen hundred sixty-eight[-]; or

§ 6. Paragraphs 3, 3-a, 4, 5, 7, 7-a, 7-b, 7-e, 7-f, 8, 9, 9-a, 10, 12, 13 and 13-a of subdivision a of section 265.20 of the penal law, paragraph 3 as amended and paragraph 7-f as added by chapter 1 of the laws of 2013, paragraph 3-a as added by chapter 371 of the laws of 2022, paragraph 4 as amended by section 10 of part EE of chapter 55 of the laws of 2014, paragraph 5 as amended by chapter 235 of the laws of 2007, paragraph 7 as amended by chapter 150 of the laws of 2020, paragraph 7-a as amended by chapter 210 of the laws of 1999, paragraph 7-b as amended by chapter 511 of the laws of 2014, paragraph 7-e as amended by chapter 281 of the laws of 2006, paragraph 8 as amended by chapter 130 of the laws of 2019, paragraphs 9 and 10 as amended by chapter 1041 of the laws of 1974, paragraph 9-a as amended by chapter 608 of the laws of 1984, paragraph 12 as added by chapter 90 of the laws of 1979, paragraph 13 as amended by chapter 150 of the laws of 1988 and paragraph 13-a as added by chapter 370 of the laws of 1986, are amended to read as follows:

3. Possession of a pistol or revolver by a person to whom a license therefor has been issued as provided under section 400.00 or 400.01 of this chapter or possession of a weapon as defined in paragraph (e) or (f) of subdivision twenty-two of section 265.00 of this article which is registered pursuant to paragraph (a) of subdivision sixteen-a of section 400.00 of this chapter or is included on an amended license issued pursuant to section 400.00 of this chapter. In the event such license is revoked, other than because such licensee is no longer permitted to possess a firearm, rifle or shotgun under federal or state law, information sufficient to satisfy the requirements of subdivision sixteen-a of section 400.00 of this chapter, shall be transmitted by the licensing officer to the state police, in a form as determined by the superintendent of state police. Such transmission shall constitute a valid registration under such section. Further provided, notwithstanding any other section of this title, a failure to register such weapon by an individual who possesses such weapon before the enactment of the chapter of the laws of two thousand thirteen which amended this paragraph and may so lawfully possess it thereafter upon registration, shall only be subject to punishment pursuant to paragraph (c) of subdivision sixteen-a of section 400.00 of this chapter; provided, that such a license or registration shall not preclude a conviction for [~~the~~] an offense defined in subdivision [~~three~~] twelve of section 265.01 of this article or section 265.01-a of this article.

3-a. Possession of a pistol or revolver by a person undergoing live-fire range training pursuant to section 400.00 of this chapter while

1 such person is undergoing such training and is supervised by a duly
2 authorized instructor; provided that such possession in accordance with
3 this paragraph shall not preclude the application of the provision of or
4 a conviction of the offense defined in subdivision twelve of section
5 265.01 of this article.

6 4. Possession of a rifle, shotgun, crossbow or longbow for use while
7 hunting, trapping or fishing, by a person, not a citizen of the United
8 States, carrying a valid license issued pursuant to section 11-0713 of
9 the environmental conservation law; provided that such possession in
10 accordance with this paragraph shall not preclude the application of the
11 provision of or a conviction of the offense defined in subdivision
12 twelve of section 265.01 of this article.

13 5. Possession of a rifle or shotgun by a person other than a person
14 who has been convicted of a class A-I felony or a violent felony
15 offense, as defined in subdivision one of section 70.02 of this chapter,
16 who has been convicted as specified in subdivision four of section
17 265.01 of this article to whom a certificate of good conduct has been
18 issued pursuant to section seven hundred three-b of the correction law;
19 provided that such possession in accordance with this paragraph shall
20 not preclude the application of the provision of or a conviction of the
21 offense defined in subdivision twelve of section 265.01 of this article.

22 7. Possession, at an indoor or outdoor shooting range for the purpose
23 of loading and firing, of a rifle or shotgun, the propelling force of
24 which is gunpowder by a person under sixteen years of age but not under
25 twelve, under the immediate supervision, guidance and instruction of (a)
26 a duly commissioned officer of the United States army, navy, air force,
27 marine corps or coast guard, or of the national guard of the state of
28 New York; or (b) a duly qualified adult citizen of the United States who
29 has been granted a certificate as an instructor in small arms practice
30 issued by the United States army, navy, air force or marine corps, or by
31 the adjutant general of this state, by the national rifle association of
32 America, a not-for-profit corporation duly organized under the laws of
33 this state, or by a New York state 4-H certified shooting sports
34 instructor; or (c) a parent, guardian, or a person over the age of eigh-
35 teen designated in writing by such parent or guardian who shall have a
36 certificate of qualification in responsible hunting, including safety,
37 ethics, and landowner relations-hunter relations, issued or honored by
38 the department of environmental conservation; or (d) an agent of the
39 department of environmental conservation appointed to conduct courses in
40 responsible hunting practices pursuant to article eleven of the environ-
41 mental conservation law; provided that such possession in accordance
42 with this paragraph shall not preclude the application of the provisions
43 of or a conviction of the offense defined in subdivision twelve of
44 section 265.01 of this article.

45 7-a. Possession and use, at an indoor or outdoor pistol range located
46 in or on premises owned or occupied by a duly incorporated organization
47 organized for conservation purposes or to foster proficiency in small
48 arms or at a target pistol shooting competition under the auspices of or
49 approved by the national rifle association for the purpose of loading
50 and firing the same, by a person duly licensed to possess a pistol or
51 revolver pursuant to section 400.00 or 400.01 of this chapter of a
52 pistol or revolver duly so licensed to another person who is present at
53 the time; provided that such possession and use in accordance with this
54 paragraph shall not preclude the application of the provisions of or a
55 conviction of the offense defined in subdivision twelve of section
56 265.01 of this article.

1 7-b. Possession and use, at an indoor or outdoor pistol range located
2 in or on premises owned or occupied by a duly incorporated organization
3 organized for conservation purposes or to foster proficiency in small
4 arms or at a target pistol shooting competition under the auspices of or
5 approved by the national rifle association for the purpose of loading
6 and firing the same, by a person who has applied for a license to
7 possess a pistol or revolver and pre-license possession of same pursuant
8 to section 400.00 or 400.01 of this chapter, who has not been previously
9 denied a license, been previously convicted of a felony or serious
10 offense, and who does not appear to be, or pose a threat to be, a danger
11 to himself or to others, and who has been approved for possession and
12 use herein in accordance with section 400.00 or 400.01 of this chapter;
13 provided however, (a) that such possession and use shall be of a pistol
14 or revolver duly licensed to and shall be used under the supervision,
15 guidance and instruction of, a person specified in paragraph seven of
16 this subdivision ~~[and provided further that], (b) such possession and~~
17 use be within the jurisdiction of the licensing officer with whom the
18 person has made application therefor or within the jurisdiction of the
19 superintendent of state police in the case of a retired sworn member of
20 the division of state police who has opted to make an application pursu-
21 ant to section 400.01 of this chapter, and (c) such possession and use
22 in accordance with this paragraph shall not preclude the application of
23 the provisions of or a conviction of the offense defined in subdivision
24 twelve of section 265.01 of this article.

25 7-e. Possession and use of a pistol or revolver, at an indoor or
26 outdoor pistol range located in or on premises owned or occupied by a
27 duly incorporated organization organized for conservation purposes or to
28 foster proficiency in small arms or at a target pistol shooting competi-
29 tion under the auspices of or approved by an association or organization
30 described in paragraph ~~[7-a]~~ seven-a of this subdivision for the purpose
31 of loading and firing the same by a person at least fourteen years of
32 age but under the age of twenty-one who has not been previously
33 convicted of a felony or serious offense, and who does not appear to be,
34 or pose a threat to be, a danger to himself or herself or to others;
35 provided however, that such possession shall be of a pistol or revolver
36 duly licensed to and shall be used under the immediate supervision,
37 guidance and instruction of, a person specified in paragraph seven of
38 this subdivision; and provided, further, that such possession and use in
39 accordance with this paragraph shall not preclude the application of the
40 provisions of or a conviction of the offense defined in subdivision
41 twelve of section 265.01 of this article.

42 7-f. Possession and use of a magazine, belt, feed strip or similar
43 device, that contains more than seven rounds of ammunition, but that
44 does not have a capacity of or can readily be restored or converted to
45 accept more than ten rounds of ammunition, at an indoor or outdoor
46 firing range located in or on premises owned or occupied by a duly
47 incorporated organization organized for conservation purposes or to
48 foster proficiency in arms; at an indoor or outdoor firing range for the
49 purpose of firing a rifle or shotgun; at a collegiate, olympic or target
50 shooting competition under the auspices of or approved by the national
51 rifle association; or at an organized match sanctioned by the Interna-
52 tional Handgun Metallic Silhouette Association; provided that such
53 possession and use in accordance with this paragraph shall not preclude
54 the application of the provisions of or a conviction of the offense
55 defined in subdivision twelve of section 265.01 of this article.

8. The manufacturer of machine-guns, firearm silencers, assault weapons, large capacity ammunition feeding devices, rapid-fire modification devices, disguised guns, pilum ballistic knives, switchblade or gravity knives, billies or blackjacks as merchandise, or as a transferee recipient of the same for repair, lawful distribution or research and development, and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, police officer or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States; or for the repair and return of the same to the lawful possessor or for research and development; provided that status as a manufacturer, or disposal and shipment in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision twelve of section 265.01 of this article.

9. The regular and ordinary transport of firearms as merchandise, provided that the person transporting such firearms, where he or she knows or has reasonable means of ascertaining what he or she is transporting, notifies in writing the police commissioner, police chief or other law enforcement officer performing such functions at the place of delivery, of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by such police commissioner, police chief or other law enforcement officer as such official may deem necessary for investigation as to whether the consignee may lawfully receive and possess such firearms, provided, further, that such transport in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision twelve of section 265.01 of this article.

9-a. a. Except as provided in [~~subdivision~~] subparagraph b [~~hereof~~] of this paragraph, the regular and ordinary transport of pistols or revolvers by a manufacturer of firearms to whom a license as a dealer in firearms has been issued pursuant to section 400.00 of this chapter, or by an agent or employee of such manufacturer of firearms who is otherwise duly licensed to carry a pistol or revolver and who is duly authorized in writing by such manufacturer of firearms to transport pistols or revolvers on the date or dates specified, directly between places where the manufacturer of firearms regularly conducts business provided such pistols or revolvers are transported unloaded, in a locked opaque container, provided that status as a manufacturer, or disposal and shipment in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision twelve of section 265.01 of this article. For purposes of this [~~subdivision~~] paragraph, places where the manufacturer of firearms regularly conducts business [~~includes~~] include, but [~~is~~] are not limited to places where the manufacturer of firearms regularly or customarily conducts development or design of pistols or revolvers, or regularly or customarily conducts tests on pistols or revolvers, or regularly or customarily participates in the exposition of firearms to the public.

b. The transportation of such pistols or revolvers into, out of or within the city of New York may be done only with the consent of the police commissioner of the city of New York. To obtain such consent, the manufacturer must notify the police commissioner in writing of the name and address of the transporting manufacturer, or agent or employee of the manufacturer who is authorized in writing by such manufacturer to

1 transport pistols or revolvers, the number, make and model number of the
2 firearms to be transported and the place where the manufacturer regular-
3 ly conducts business within the city of New York and such other informa-
4 tion as the commissioner may deem necessary. The manufacturer must not
5 transport such pistols and revolvers between the designated places of
6 business for such reasonable period of time designated in writing by the
7 police commissioner as such official may deem necessary for investi-
8 gation and to give consent. The police commissioner may not unreasonably
9 withhold his consent.

10 10. Engaging in the business of gunsmith or dealer in firearms by a
11 person to whom a valid license therefor has been issued pursuant to
12 section 400.00 of this chapter, provided that engaging in such business
13 in accordance with this paragraph shall not preclude the application of
14 the provisions of or a conviction of the offense defined in subdivision
15 twelve of section 265.01 of this article.

16 12. Possession of a pistol or revolver by a person who is a member or
17 coach of an accredited college or university target pistol team while
18 transporting the pistol or revolver into or through New York state to
19 participate in a collegiate, olympic or target pistol shooting competi-
20 tion under the auspices of or approved by the national rifle associ-
21 ation, provided such pistol or revolver is unloaded and carried in a
22 locked carrying case and the ammunition therefor is carried in a sepa-
23 rate locked container, provided, further that such possession in accord-
24 ance with this paragraph shall not preclude the application of the
25 provisions of or a conviction of the offense defined in subdivision
26 twelve of section 265.01 of this article.

27 13. Possession of pistols and revolvers by a person who is a nonresi-
28 dent of this state while attending or traveling to or from, an organized
29 competitive pistol match or league competition under auspices of, or
30 approved by, the National Rifle Association and in which he or she is a
31 competitor, within forty-eight hours of such event or by a person who is
32 a non-resident of the state while attending or traveling to or from an
33 organized match sanctioned by the International Handgun Metallic Silhou-
34 ette Association and in which he or she is a competitor, within forty-
35 eight hours of such event, provided that (a) he or she has not been
36 previously convicted of a felony or a crime which, if committed in New
37 York, would constitute a felony, (b) such possession in accordance with
38 this paragraph shall not preclude the application of the provisions of
39 or a conviction of the offense defined in subdivision twelve of section
40 265.01 of this article, and [~~further provided~~] (c) that the pistols or
41 revolvers are transported unloaded in a locked opaque container together
42 with a copy of the match program, match schedule or match registration
43 card. Such documentation shall constitute prima facie evidence of
44 exemption, [~~providing~~] provided that such person also has in his or her
45 possession a pistol license or firearms registration card issued in
46 accordance with the laws of his or her place of residence. For purposes
47 of this [~~subdivision~~] paragraph, a person licensed in a jurisdiction
48 which does not authorize such license by a person who has been previous-
49 ly convicted of a felony shall be presumed to have no prior conviction.
50 The superintendent of state police shall annually review the laws of
51 jurisdictions within the United States and Canada with respect to the
52 applicable requirements for licensing or registration of firearms and
53 shall publish a list of those jurisdictions which prohibit possession of
54 a firearm by a person previously convicted of a felony or crimes which
55 if committed in New York state would constitute a felony.

13-a. Except in cities not wholly contained within a single county of the state, possession of pistols and revolvers by a person who is a nonresident of this state while attending or traveling to or from, an organized convention or exhibition for the display of or education about firearms, which is conducted under auspices of, or approved by, the National Rifle Association and in which he or she is a registered participant, within forty-eight hours of such event, provided that (a) he or she has not been previously convicted of a felony or a crime which, if committed in New York, would constitute a felony, (b) such possession in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision twelve of section 265.01 of this article, and [~~further provided—that~~] (c) the pistols or revolvers are transported unloaded in a locked opaque container together with a copy of the convention or exhibition program, convention or exhibition schedule or convention or exhibition registration card. Such documentation shall constitute prima facie evidence of exemption, [~~providing~~] provided that such person also has in his or her possession a pistol license or firearms registration card issued in accordance with the laws of his or her place of residence. For purposes of this paragraph, a person licensed in a jurisdiction which does not authorize such license by a person who has been previously convicted of a felony shall be presumed to have no prior conviction. The superintendent of state police shall annually review the laws of jurisdictions within the United States and Canada with respect to the applicable requirements for licensing or registration of firearms and shall publish a list of those jurisdictions which prohibit possession of a firearm by a person previously convicted of a felony or crimes which if committed in New York state would constitute a felony.

§ 7. The penal law is amended by adding two new sections 265.70 and 265.75 to read as follows:

§ 265.70 Testing.

1. Field testing. Every person who possesses a firearm, rifle or shotgun which has been brandished, displayed outside a holster, discharged or otherwise used (other than in the person's home, at an indoor or outdoor shooting range, or in an area where hunting is permitted with the weapon), or which is possessed, displayed or discharged in violation of any provision of this chapter shall, at the request of a police officer, submit to a breath test to be administered by the police officer, unless such person demonstrates to such police officer's satisfaction that he or she is not subject to the provisions of subdivision twelve of section 265.01 of this article. If such test indicates that such possessor has consumed alcohol, the police officer may request such possessor to submit to a chemical test in the manner set forth in subdivision two of this section.

2. Chemical tests. (a) When authorized. Any person who possesses a firearm, rifle or shotgun in this state, other than in such person's home, shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of the blood provided that such test is administered by or at the direction of a police officer with respect to a chemical test of breath, urine or saliva or, with respect to a chemical test of blood, at the direction of a police officer:

(1) having reasonable grounds to believe such person possessed a firearm, rifle or shotgun in violation of subdivision twelve of section

1 265.01 of this article and within two hours after such person has been
2 placed under arrest for any such violation; or

3 (2) within two hours after a breath test, as provided in subdivision
4 one of this section, indicates that alcohol has been consumed by such
5 person and in accordance with the rules and regulations established by
6 the law enforcement agency of which the officer is a member.

7 For the purposes of this paragraph, "reasonable grounds" to believe
8 that a person possessed a firearm, rifle or shotgun in violation of
9 subdivision twelve of section 265.01 of this article shall be determined
10 by viewing the totality of circumstances surrounding the incident which,
11 when taken together, indicate that the possession violated such subdivi-
12 sion. Such circumstances may include any visible or behavioral indi-
13 cation of alcohol or drug consumption by such person, the existence of
14 an open container containing or having contained an alcoholic beverage
15 in or around the vicinity of such person, or any other evidence
16 surrounding the circumstances of the incident which indicates that the
17 person was in possession of a firearm, rifle or shotgun after having
18 consumed alcohol or drugs at the time of the incident.

19 (b) Report of refusal. (1) If: (A) such person having been placed
20 under arrest; or (B) after a breath test indicates the presence of alco-
21 hol in the person's system; and the person having thereafter been
22 requested to submit to such chemical test and having been informed that
23 any license held by such person to possess a firearm, rifle or shotgun
24 shall be subject to suspension or revocation for refusal to submit to
25 such test whether or not the person is found guilty of the charge for
26 which such person is arrested or detained, then if such person refuses
27 to submit to such chemical test or any portion thereof, unless a court
28 order has been granted pursuant to subdivision three of this section,
29 the test shall not be given and a written report of such refusal shall
30 be immediately made by the police officer before whom such refusal was
31 made. Such report may be verified by having the report sworn to, or by
32 affixing to such report a form notice that false statements made therein
33 are punishable as a class A misdemeanor pursuant to section 210.45 of
34 this chapter and such form notice together with the subscription of the
35 deponent shall constitute a verification of the report.

36 (2) The report of the police officer shall set forth reasonable
37 grounds to believe such arrested person had possessed a firearm, rifle
38 or shotgun in violation of subdivision twelve of section 265.01 of this
39 article, that said person had refused to submit to such chemical test,
40 and that no chemical test was administered pursuant to the requirements
41 of subdivision three of this section. The report shall be presented to
42 the court upon arraignment of an arrested person, and shall be transmit-
43 ted by such court to the appropriate licensing authority within forty-
44 eight hours of the arraignment. Such transmittal shall not be waived
45 even with the consent of all parties.

46 (3) The license may be temporarily suspended by such licensing author-
47 ity pending the determination of a hearing, in accordance with the rules
48 and procedures of such authority, for refusal to submit to a test in
49 either the circumstances described in subdivision one of this section or
50 the circumstances described in subparagraph one of this paragraph. Any
51 such refusal may, after such hearing or if uncontested, constitute
52 grounds for continued suspension or revocation of such license in
53 accordance with such rules and procedures.

54 (4) Nothing in this section shall be deemed to restrict the discretion
55 of any licensing authority or the discretion of any judge or justice of
56 a court of record under subdivision eleven of section 400.00 of this

chapter to suspend or revoke a license because of an alleged violation of subdivision twelve of section 265.01 of this article, or for any other reason other than refusal to submit to a test as required by this subdivision or subdivision one of this section.

(c) Regulations. A licensing authority or law enforcement agency may promulgate such rules and regulations as may be necessary to effectuate the provisions of this subdivision and subdivision one of this section.

(d) Evidence. Evidence of a refusal to submit to such chemical test or any portion thereof shall be admissible in any trial, proceeding or hearing based upon an alleged violation of the provisions of subdivision twelve of section 265.01 of this article but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and that the person persisted in the refusal. Such showing shall be satisfied by submission of a verified report of refusal as provided in subparagraph one of paragraph (b) of this subdivision containing a statement that such person was informed that his or her license shall be subject to suspension or revocation whether or not the person is found guilty of the charge for which such person is arrested or detained if such person refuses to submit to such test.

(e) Results. Upon the request of the person who was tested, the results of such test shall be made available to such person.

3. Compulsory chemical tests. (a) Court ordered chemical tests. Notwithstanding the provisions of subdivision two of this section, no person subject to the provisions of subdivision twelve of section 265.01 of this article who possesses a firearm, rifle or shotgun (other than in the person's home, at an indoor or outdoor shooting range, or an area where hunting is permitted with the weapon) may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or saliva, for the purpose of determining the alcoholic and/or drug content of the blood when a court order for such chemical test has been issued in accordance with the provisions of this subdivision.

(b) When authorized. Upon refusal by any person to submit to a chemical test or any portion thereof as described in paragraph (a) of this subdivision, the test shall not be given unless a police officer or a district attorney, as defined in subdivision thirty-two of section 1.20 of the criminal procedure law, requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic or drug content of the person's blood upon a finding of reasonable cause to believe that:

(1) such person possessed a firearm, rifle or shotgun with which another person was killed or suffered physical injury; and

(2) (A) either such person possessed the firearm, rifle or shotgun in violation of subdivision twelve of section 265.01 of this article, or

(B) a breath test administered by a police officer in accordance with subdivision one of this section indicates that alcohol has been consumed by such person; and

(3) such person has been placed under lawful arrest; and

(4) such person has refused to submit to a chemical test or any portion thereof, requested in accordance with the provisions of paragraph (a) of subdivision two of this section or is unable to give consent to such a test.

(c) Reasonable cause; definition. For the purpose of this subdivision "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the person possessed a firearm, rifle or shotgun in violation

1 of subdivision twelve of section 265.01 of this article. Such circum-
2 stances may include, but are not limited to: evidence that such person
3 was brandishing or using the firearm, rifle or shotgun in violation of
4 any provision of this chapter or committing any other crime at the time
5 of the incident; any visible indication of alcohol or drug consumption
6 or impairment by such person; the existence of an open container
7 containing an alcoholic beverage in or around the vicinity of such
8 person; or any other evidence surrounding the circumstances of the inci-
9 dent which indicates that the person possessed a firearm, rifle or shot-
10 gun while impaired by the consumption of alcohol or drugs or was intoxi-
11 cated at the time of the incident.

12 (d) Court order; procedure. (1) An application for a court order to
13 compel submission to a chemical test or any portion thereof, may be made
14 to any supreme court justice, county court judge or district court judge
15 in the judicial district in which the incident occurred, or if the inci-
16 dent occurred in the city of New York before any supreme court justice
17 or judge of the criminal court of the city of New York. Such applica-
18 tion may be communicated by telephone, radio or other means of electron-
19 ic communication, or in person.

20 (2) The applicant must provide identification by name and title and
21 must state the purpose of the communication. Upon being advised that an
22 application for a court order to compel submission to a chemical test is
23 being made, the court shall place under oath the applicant and any other
24 person providing information in support of the application as provided
25 in subparagraph three of this paragraph. After being sworn the applicant
26 must state that the person from whom the chemical test was requested
27 possessed a firearm, rifle or shotgun with which another person was
28 killed or physically injured and, based upon the totality of circum-
29 stances, there is reasonable cause to believe that such person possessed
30 a firearm, rifle or shotgun in violation of subdivision twelve of
31 section 265.01 of this article or a breath test indicated that alcohol
32 had been consumed by such person and, after being placed under lawful
33 arrest such person refused to submit to a chemical test or any portion
34 thereof, in accordance with the provisions of this section or is unable
35 to give consent to such a test or any portion thereof. The applicant
36 must make specific allegations of fact to support such statement. Any
37 other person properly identified, may present sworn allegations of fact
38 in support of the applicant's statement.

39 (3) Upon being advised that an oral application for a court order to
40 compel a person to submit to a chemical test is being made, a judge or
41 justice shall place under oath the applicant and any other person
42 providing information in support of the application. Such oath or oaths
43 and all of the remaining communication must be recorded, either by means
44 of a voice recording device or verbatim stenographic or verbatim long-
45 hand notes. If a voice recording device is used or a stenographic record
46 made, the judge must have the record transcribed, certify to the accura-
47 cy of the transcription and file the original record and transcription
48 with the court within seventy-two hours of the issuance of the court
49 order. If longhand notes are taken, the judge shall subscribe a copy and
50 file it with the court within twenty-four hours of the issuance of the
51 order.

52 (4) If the court is satisfied that the requirements for the issuance
53 of a court order pursuant to the provisions of paragraph (b) of this
54 subdivision have been met, it may grant the application and issue an
55 order requiring the accused to submit to a chemical test to determine
56 the alcoholic and/or drug content of his or her blood and ordering the

1 withdrawal of a blood sample in accordance with the provisions of para-
2 graph (a) of subdivision four of this section. When a judge or justice
3 determines to issue an order to compel submission to a chemical test
4 based on an oral application, the applicant therefor shall prepare the
5 order in accordance with the instructions of the judge or justice. In
6 all cases the order shall include the name of the issuing judge or
7 justice, the name of the applicant, and the date and time it was issued.
8 It must be signed by the judge or justice if issued in person, or by the
9 applicant if issued orally.

10 (5) Any false statement by an applicant or any other person in support
11 of an application for a court order shall subject such person to the
12 offenses for perjury set forth in article two hundred ten of this chap-
13 ter.

14 (6) The chief administrator of the courts shall establish a schedule
15 to provide that a sufficient number of judges or justices will be avail-
16 able in each judicial district to hear oral applications for court
17 orders as permitted by this section.

18 (e) Administration of compulsory chemical test. An order issued pursu-
19 ant to the provisions of this subdivision shall require that a chemical
20 test to determine the alcoholic and/or drug content of the possessor's
21 blood must be administered. The provisions of paragraphs (a), (b) and
22 (c) of subdivision four of this section shall be applicable to any chem-
23 ical test administered pursuant to this section.

24 4. Testing procedures. (a) Persons authorized to withdraw blood; immu-
25 nity; testimony. (1) At the request of a police officer, the following
26 persons may withdraw blood for the purpose of determining the alcoholic
27 and/or drug content therein: (A) a physician, a registered professional
28 nurse or a registered physician assistant; or (B) under the supervision
29 and at the direction of a physician: a medical laboratory technician or
30 medical technologist as classified by civil service; a phlebotomist; an
31 advanced emergency medical technician as certified by the department of
32 health; or a medical laboratory technician or medical technologist
33 employed by a clinical laboratory approved under title five of article
34 five of the public health law. This limitation shall not apply to the
35 taking of a urine, saliva or breath specimen.

36 (2) No person entitled to withdraw blood pursuant to subparagraph one
37 of this paragraph or hospital employing such person, and no other
38 employer of such person shall be sued or held liable for any act done or
39 omitted in the course of withdrawing blood at the request of a police
40 officer pursuant to this section.

41 (3) Any person who may have a cause of action arising from the with-
42 drawal of blood as aforesaid, for which no personal liability exists
43 under subparagraph two of this paragraph, may maintain such action
44 against the state if any person entitled to withdraw blood pursuant to
45 this paragraph acted at the request of a police officer employed by the
46 state, or against the appropriate political subdivision of the state if
47 such person acted at the request of a police officer employed by a poli-
48 tical subdivision of the state. No action shall be maintained pursuant
49 to this subparagraph unless notice of claim is duly filed or served in
50 compliance with law.

51 (4) Notwithstanding the foregoing provisions of this paragraph an
52 action may be maintained by the state or a political subdivision thereof
53 against a person entitled to withdraw blood pursuant to subparagraph one
54 of this paragraph or hospital employing such person for whose act or
55 omission the state or the political subdivision has been held liable
56 under this paragraph to recover damages, not exceeding the amount

1 awarded to the claimant, that may have been sustained by the state or
2 the political subdivision by reason of gross negligence or bad faith on
3 the part of such person.

4 (5) The testimony of any person other than a physician, entitled to
5 withdraw blood pursuant to subparagraph one of this paragraph, in
6 respect to any such withdrawal of blood made by such person may be
7 received in evidence with the same weight, force and effect as if such
8 withdrawal of blood were made by a physician.

9 (6) The provisions of subparagraphs two, three and four of this para-
10 graph shall also apply with regard to any person employed by a hospital
11 as security personnel for any act done or omitted in the course of with-
12 drawing blood at the request of a police officer pursuant to a court
13 order in accordance with subdivision three of this section.

14 (b) Right to additional test. The person tested shall be permitted to
15 choose a physician to administer a chemical test in addition to the one
16 administered at the direction of the police officer.

17 (c) Rules and regulations. The rules and regulations issued by the
18 department of health pursuant to paragraph (c) of subdivision four of
19 section eleven hundred ninety-four of the vehicle and traffic law shall
20 also apply to analyses under this section. If the analyses were made by
21 an individual possessing a permit issued by the department of health,
22 this shall be presumptive evidence that the examination was properly
23 given. The provisions of this paragraph do not prohibit the introduction
24 as evidence of an analysis made by an individual other than a person
25 possessing a permit issued by the department of health.

26 5. Definitions. For the purposes of this section:

27 (a) "License" means and includes licenses issued pursuant to section
28 400.00 of this chapter, and any permit issued by a county, city, town or
29 village pursuant to a local law, code or ordinance which restricts the
30 possession and purchase of rifles and shotguns.

31 (b) "Licensing authority" means the licensing officer or agency which
32 issues a license.

33 § 265.75 Chemical test evidence.

34 1. Admissibility. Upon the trial of any action or proceeding arising
35 out of actions alleged to have been committed by any person arrested for
36 a violation of subdivision twelve of section 265.01 of this article, the
37 court shall admit evidence of the amount of alcohol or drugs in the
38 defendant's blood as shown by a test administered pursuant to the
39 provisions of section 265.70 of this article.

40 2. Probative value. The following effect shall be given to evidence of
41 blood-alcohol content, as determined by such tests, of a person arrested
42 for violation of subdivision twelve of section 265.01 of this article:

43 (a) Evidence that there was .05 of one per centum or less by weight of
44 alcohol in such person's blood shall be prima facie evidence that the
45 ability of such person to safely possess a firearm, rifle or shotgun was
46 not impaired by the consumption of alcohol, and that such person was not
47 in an intoxicated condition;

48 (b) Evidence that there was more than .05 of one per centum but less
49 than .07 of one per centum by weight of alcohol in such person's blood
50 shall be prima facie evidence that such person was not in an intoxicated
51 condition, but such evidence shall be relevant evidence, but shall not
52 be given prima facie effect, in determining whether the ability of such
53 person to safely possess a firearm, rifle or shotgun was impaired by the
54 consumption of alcohol; and

55 (c) Evidence that there was .07 of one per centum or more but less
56 than .08 of one per centum by weight of alcohol in such person's blood

1 shall be prima facie evidence that such person was not in an intoxicated
2 condition, but such evidence shall be given prima facie effect in deter-
3 mining whether the ability of such person to safely possess a firearm,
4 rifle or shotgun was impaired by the consumption of alcohol.

5 3. Suppression. A defendant who has been compelled to submit to a
6 chemical test pursuant to the provisions of subdivision three of section
7 265.70 of this article may move for the suppression of such evidence in
8 accordance with article seven hundred ten of the criminal procedure law
9 on the grounds that the order was obtained and the test administered in
10 violation of the provisions of such subdivision or any other applicable
11 law.

12 § 8. Paragraph (a) of subdivision 11 of section 400.00 of the penal
13 law, as amended by chapter 371 of the laws of 2022, is amended to read
14 as follows:

15 (a) The conviction of a licensee anywhere of a felony or serious
16 offense or a licensee at any time becoming ineligible to obtain a
17 license, including engaging in conduct that would have resulted in the
18 denial of a license, under this section shall operate as or be grounds
19 for, a revocation of the license. A license may be revoked or suspended
20 as provided for in subdivision two of section 265.70 of this chapter,
21 section 530.14 of the criminal procedure law or section eight hundred
22 forty-two-a of the family court act. Except for a license issued pursu-
23 ant to section 400.01 of this article, a license may be revoked and
24 cancelled at any time in the city of New York, and in the counties of
25 Nassau and Suffolk, by the licensing officer, and elsewhere than in the
26 city of New York by any judge or justice of a court of record; a license
27 issued pursuant to section 400.01 of this article may be revoked and
28 cancelled at any time by the licensing officer or any judge or justice
29 of a court of record. A license to engage in the business of dealer may
30 be revoked or suspended for any violation of the provisions of article
31 thirty-nine-BB of the general business law. The official revoking a
32 license shall give written notice thereof without unnecessary delay to
33 the executive department, division of state police, Albany, and shall
34 also notify immediately the duly constituted police authorities of the
35 locality. The licensing officer shall revoke any license issued in which
36 an applicant knowingly made a material false statement on the applica-
37 tion. Notice of a revocation under this subdivision shall be issued in
38 writing and shall include the basis for the determination, which shall
39 be supported by a preponderance of the evidence. Such notice shall also
40 include information regarding the ability to appeal such decision in
41 accordance with subdivision four-a of this section.

42 § 9. This act shall take effect on the one hundred eightieth day after
43 it shall have become a law. Provided, however, that any actions,
44 including but not limited to the promulgation of rules and regulations,
45 necessary to implement the provisions of this act on its effective date
46 are authorized and directed to be made and completed on or before such
47 date.