

STATE OF NEW YORK

5785

2025-2026 Regular Sessions

IN SENATE

March 3, 2025

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

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 37 to read as follows:

14 37. "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 Subdivision 3 of section 265.01 of the penal law is REPEALED.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~~] Such person possesses a rifle, shotgun, antique firearm,
22 black powder rifle, black powder shotgun, or any muzzle-loading firearm,
23 and 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.

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1 (5) [~~He~~] Such person possesses any dangerous or deadly weapon and is
2 not a citizen of the United States; or

3 (6) [~~He is a~~] Such person [~~who~~] has been certified not suitable to
4 possess a rifle or shotgun, as defined in subdivision sixteen of section
5 265.00 of this article, and refuses to yield possession of such rifle or
6 shotgun upon the demand of a police officer. Whenever a person is certi-
7 fied not suitable to possess a rifle or shotgun, a member of the police
8 department to which such certification is made, or of the state police,
9 shall forthwith seize any rifle or shotgun possessed by such person. A
10 rifle or shotgun seized as herein provided shall not be destroyed, but
11 shall be delivered to the headquarters of such police department, or
12 state police, and there retained until the aforesaid certificate has
13 been rescinded by the director or physician in charge, or other disposi-
14 tion of such rifle or shotgun has been ordered or authorized by a court
15 of competent jurisdiction[~~-~~]; or

16 (7) [~~He~~] Such person knowingly possesses a bullet containing an
17 explosive substance designed to detonate upon impact[~~-~~]; or

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

20 (12) (a) Such person possesses a firearm, rifle or shotgun outside of
21 their home while:

22 (i) in an intoxicated condition; or

23 (ii) with .08 of one per centum or more by weight of alcohol in such
24 person's blood as shown by chemical analysis of such person's blood,
25 breath, urine or saliva, made pursuant to section 265.70 of this arti-
26 cle; or

27 (iii) such person's ability to safely possess such firearm, rifle or
28 shotgun is impaired by consumption of alcohol; or

29 (iv) such person's ability to safely possess such firearm, rifle or
30 shotgun is impaired by use of any drug; or

31 (v) such person's ability to safely possess such firearm, rifle or
32 shotgun is impaired by the combined influence of drugs or of alcohol and
33 any drug or drugs.

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

39 § 5. Subdivisions 9 and 10 of section 265.01 of the penal law, subdi-
40 vision 9 as amended by chapter 149 of the laws of 2022, subdivision 10
41 as amended by chapter 94 of the laws of 2022, are renumbered subdivi-
42 sions 10 and 11 and are amended to read as follows:

43 (10) Such person is not licensed as a gunsmith or a dealer in firearms
44 pursuant to section 400.00 of this chapter and, knowing it is a ghost
45 gun, such person possesses a ghost gun, provided that a person shall not
46 be guilty under this subdivision when [~~he or she~~] such person (a) volun-
47 tarily surrenders such ghost gun to any law enforcement official desig-
48 nated pursuant to subparagraph (f) of paragraph one of subdivision (a)
49 of section 265.20 of this article; or (b) for a period of six months
50 after the effective date of this section possesses a ghost gun prior to
51 serialization and registration of such ghost gun pursuant to section
52 265.07 of this article[~~-~~]; or

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

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

17 § 6. Paragraphs 3, 3-a, 4, 5, 7, 7-a, 7-b, 7-e, 7-f, 8, 9, 9-a, 10,
18 12, 13 and 13-a of subdivision a of section 265.20 of the penal law,
19 paragraph 3 as amended and paragraph 7-f as added by chapter 1 of the
20 laws of 2013, paragraph 3-a as added by chapter 371 of the laws of 2022,
21 paragraph 4 as amended by section 10 of part EE of chapter 55 of the
22 laws of 2014, paragraph 5 as amended by chapter 235 of the laws of 2007,
23 paragraph 7 as amended by chapter 150 of the laws of 2020, paragraph 7-a
24 as amended by chapter 210 of the laws of 1999, paragraph 7-b as amended
25 by chapter 511 of the laws of 2014, paragraph 7-e as amended by chapter
26 281 of the laws of 2006, paragraph 8 as amended by chapter 130 of the
27 laws of 2019, paragraphs 9 and 10 as amended by chapter 1041 of the laws
28 of 1974, paragraph 9-a as amended by chapter 608 of the laws of 1984,
29 paragraph 12 as added by chapter 90 of the laws of 1979, paragraph 13 as
30 amended by chapter 150 of the laws of 1988 and paragraph 13-a as added
31 by chapter 370 of the laws of 1986, are amended to read as follows:

32 3. Possession of a pistol or revolver by a person to whom a license
33 therefor has been issued as provided under section 400.00 or 400.01 of
34 this chapter or possession of a weapon as defined in paragraph (e) or
35 (f) of subdivision twenty-two of section 265.00 of this article which is
36 registered pursuant to paragraph (a) of subdivision sixteen-a of section
37 400.00 of this chapter or is included on an amended license issued
38 pursuant to section 400.00 of this chapter. In the event such license is
39 revoked, other than because such licensee is no longer permitted to
40 possess a firearm, rifle or shotgun under federal or state law, informa-
41 tion sufficient to satisfy the requirements of subdivision sixteen-a of
42 section 400.00 of this chapter, shall be transmitted by the licensing
43 officer to the state police, in a form as determined by the superinten-
44 dent of state police. Such transmission shall constitute a valid regis-
45 tration under such section. Further provided, notwithstanding any other
46 section of this title, a failure to register such weapon by an individ-
47 ual who possesses such weapon before the enactment of the chapter of the
48 laws of two thousand thirteen which amended this paragraph and may so
49 lawfully possess it thereafter upon registration, shall only be subject
50 to punishment pursuant to paragraph (c) of subdivision sixteen-a of
51 section 400.00 of this chapter; provided, that such a license or regis-
52 tration shall not preclude a conviction for [~~the~~ an] offense defined in
53 subdivision [~~three~~] twelve of section 265.01 of this article or section
54 265.01-a of this article.

55 3-a. Possession of a pistol or revolver by a person undergoing live-
56 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 eight-
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~~] themselves or to others, and who has been approved for
12 possession and use herein in accordance with section 400.00 or 400.01 of
13 this chapter; provided however, (a) that such possession and use shall
14 be of a pistol or revolver duly licensed to and shall be used under the
15 supervision, guidance and instruction of, a person specified in para-
16 graph seven of this subdivision [~~and provided further that~~], (b) such
17 possession and use be within the jurisdiction of the licensing officer
18 with whom the person has made application therefor or within the juris-
19 diction of the superintendent of state police in the case of a retired
20 sworn member of the division of state police who has opted to make an
21 application pursuant to section 400.01 of this chapter, and (c) such
22 possession and use in accordance with this paragraph shall not preclude
23 the application of the provisions of or a conviction of the offense
24 defined in subdivision 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~~] themselves 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.

1 8. The manufacturer of machine-guns, firearm silencers, assault weap-
2 ons, large capacity ammunition feeding devices, rapid-fire modification
3 devices, disguised guns, pilum ballistic knives, switchblade or gravity
4 knives, billies or blackjacks as merchandise, or as a transferee recipi-
5 ent of the same for repair, lawful distribution or research and develop-
6 ment, and the disposal and shipment thereof direct to a regularly
7 constituted or appointed state or municipal police department, sheriff,
8 police officer or other peace officer, or to a state prison, penitenti-
9 ary, workhouse, county jail or other institution for the detention of
10 persons convicted or accused of crime or held as witnesses in criminal
11 cases, or to the military service of this state or of the United States;
12 or for the repair and return of the same to the lawful possessor or for
13 research and development; provided that status as a manufacturer, or
14 disposal and shipment in accordance with this paragraph shall not
15 preclude the application of the provisions of or a conviction of the
16 offense defined in subdivision twelve of section 265.01 of this article.

17 9. The regular and ordinary transport of firearms as merchandise,
18 provided that the person transporting such firearms, where [~~he~~] such
19 person knows or has reasonable means of ascertaining what [~~he~~] such
20 person is transporting, notifies in writing the police commissioner,
21 police chief or other law enforcement officer performing such functions
22 at the place of delivery, of the name and address of the consignee and
23 the place of delivery, and withholds delivery to the consignee for such
24 reasonable period of time designated in writing by such police commis-
25 sioner, police chief or other law enforcement officer as such official
26 may deem necessary for investigation as to whether the consignee may
27 lawfully receive and possess such firearms, provided, further, that such
28 transport in accordance with this paragraph shall not preclude the
29 application of the provisions of or a conviction of the offense defined
30 in subdivision twelve of section 265.01 of this article.

31 9-a. a. Except as provided in [~~subdivision~~] subparagraph b [~~hereof~~] of
32 this paragraph, the regular and ordinary transport of pistols or revol-
33 vers by a manufacturer of firearms to whom a license as a dealer in
34 firearms has been issued pursuant to section 400.00 of this chapter, or
35 by an agent or employee of such manufacturer of firearms who is other-
36 wise duly licensed to carry a pistol or revolver and who is duly author-
37 ized in writing by such manufacturer of firearms to transport pistols or
38 revolvers on the date or dates specified, directly between places where
39 the manufacturer of firearms regularly conducts business provided such
40 pistols or revolvers are transported unloaded, in a locked opaque
41 container, provided that status as a manufacturer, or disposal and ship-
42 ment in accordance with this paragraph shall not preclude the applica-
43 tion of the provisions of or a conviction of the offense defined in
44 subdivision twelve of section 265.01 of this article. For purposes of
45 this [~~subdivision~~] paragraph, places where the manufacturer of firearms
46 regularly conducts business [~~includes~~] include, but [~~is~~] are not limited
47 to places where the manufacturer of firearms regularly or customarily
48 conducts development or design of pistols or revolvers, or regularly or
49 customarily conducts tests on pistols or revolvers, or regularly or
50 customarily participates in the exposition of firearms to the public.

51 b. The transportation of such pistols or revolvers into, out of or
52 within the city of New York may be done only with the consent of the
53 police commissioner of the city of New York. To obtain such consent, the
54 manufacturer must notify the police commissioner in writing of the name
55 and address of the transporting manufacturer, or agent or employee of
56 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~~] their 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~~] such
31 person is a competitor, within forty-eight hours of such event or by a
32 person who is a non-resident of the state while attending or traveling
33 to or from an organized match sanctioned by the International Handgun
34 Metallic Silhouette Association and in which [~~he~~] such person is a
35 competitor, within forty-eight hours of such event, provided that [~~he~~]
36 (a) such person has not been previously convicted of a felony or a crime
37 which, if committed in New York, would constitute a felony, (b) such
38 possession in accordance with this paragraph shall not preclude the
39 application of the provisions of or a conviction of the offense defined
40 in subdivision twelve of section 265.01 of this article, and [~~further~~
41 ~~provided~~] (c) that the pistols or revolvers are transported unloaded in
42 a locked opaque container together with a copy of the match program,
43 match schedule or match registration card. Such documentation shall
44 constitute prima facie evidence of exemption, [~~providing~~] provided that
45 such person also has in [~~his~~] their possession a pistol license or
46 firearms registration card issued in accordance with the laws of [~~his~~]
47 such person's place of residence. For purposes of this [~~subdivision~~]
48 paragraph, a person licensed in a jurisdiction which does not authorize
49 such license by a person who has been previously convicted of a felony
50 shall be presumed to have no prior conviction. The superintendent of
51 state police shall annually review the laws of jurisdictions within the
52 United States and Canada with respect to the applicable requirements for
53 licensing or registration of firearms and shall publish a list of those
54 jurisdictions which prohibit possession of a firearm by a person previ-
55 ously convicted of a felony or crimes which if committed in New York
56 state would constitute a felony.

1 13-a. Except in cities not wholly contained within a single county of
2 the state, possession of pistols and revolvers by a person who is a
3 nonresident of this state while attending or traveling to or from, an
4 organized convention or exhibition for the display of or education about
5 firearms, which is conducted under auspices of, or approved by, the
6 National Rifle Association and in which [~~he~~] such person is a registered
7 participant, within forty-eight hours of such event, provided that [~~he~~]
8 (a) such person has not been previously convicted of a felony or a crime
9 which, if committed in New York, would constitute a felony, (b) such
10 possession in accordance with this paragraph shall not preclude the
11 application of the provisions of or a conviction of the offense defined
12 in subdivision twelve of section 265.01 of this article, and [~~further~~
13 ~~provided—that~~] (c) the pistols or revolvers are transported unloaded in
14 a locked opaque container together with a copy of the convention or
15 exhibition program, convention or exhibition schedule or convention or
16 exhibition registration card. Such documentation shall constitute prima
17 facie evidence of exemption, [~~providing~~] provided that such person also
18 has in [~~his~~] their possession a pistol license or firearms registration
19 card issued in accordance with the laws of [~~his~~] such person's place of
20 residence. For purposes of this paragraph, a person licensed in a juris-
21 diction which does not authorize such license by a person who has been
22 previously convicted of a felony shall be presumed to have no prior
23 conviction. The superintendent of state police shall annually review the
24 laws of jurisdictions within the United States and Canada with respect
25 to the applicable requirements for licensing or registration of firearms
26 and shall publish a list of those jurisdictions which prohibit
27 possession of a firearm by a person previously convicted of a felony or
28 crimes which if committed in New York state would constitute a felony.

29 § 7. The penal law is amended by adding two new sections 265.70 and
30 265.75 to read as follows:

31 § 265.70 Testing.

32 1. Field testing. Every person who possesses a firearm, rifle or shot-
33 gun which has been brandished, displayed outside a holster, discharged
34 or otherwise used (other than in the person's home, at an indoor or
35 outdoor shooting range, or in an area where hunting is permitted with
36 the weapon), or which is possessed, displayed or discharged in violation
37 of any provision of this chapter shall, at the request of a police offi-
38 cer, submit to a breath test to be administered by the police officer,
39 unless such person demonstrates to such police officer's satisfaction
40 that such person is not subject to the provisions of subdivision twelve
41 of section 265.01 of this article. If such test indicates that such
42 possessor has consumed alcohol, the police officer may request such
43 possessor to submit to a chemical test in the manner set forth in subdi-
44 vision two of this section.

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

54 (1) having reasonable grounds to believe such person possessed a
55 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

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

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

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

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

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

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

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

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

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

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

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

52 (c) Reasonable cause; definition. For the purpose of this subdivision
53 "reasonable cause" shall be determined by viewing the totality of
54 circumstances surrounding the incident which, when taken together, indi-
55 cate that the person possessed a firearm, rifle or shotgun in violation
56 of subdivision twelve of section 265.01 of this article. Such circum-

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the political subdivision by reason of gross negligence or bad faith on
2 the part of such person.

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

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

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

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

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

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

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

32 § 265.75 Chemical test evidence.

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

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

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

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

54 (c) Evidence that there was .07 of one per centum or more but less
55 than .08 of one per centum by weight of alcohol in such person's blood
56 shall be prima facie evidence that such person was not in an intoxicated

1 condition, but such evidence shall be given prima facie effect in deter-
2 mining whether the ability of such person to safely possess a firearm,
3 rifle or shotgun was impaired by the consumption of alcohol.

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

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

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

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