

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

JOHN BORON )  
Depew, NY 14043 )

BRETT CHRISTIAN )  
Cheektowaga, NY 14225 )

FIREARMS POLICY COALITION, INC. )  
5550 Painted Mirage Rd. Ste. 320 )  
Las Vegas, NV 89149, *and* )

SECOND AMENDMENT FOUNDATION )  
12500 NE 10th Place )  
Bellevue, WA, 98005, )

*Plaintiffs,* )

v. )

Civil Action No.

KEVIN P. BRUEN, in his official capacity as )  
Superintendent of the New York State Police )  
New York State Police )  
1220 Washington Avenue )  
Building 22 )  
Albany, NY 12226, )

JOHN J. FLYNN, in his official capacity as )  
District Attorney for the County of Erie, New )  
York )  
Erie County District Attorney’s Office )  
25 Delaware Ave )  
Buffalo, NY 14202, )

*Defendants.* )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs John Boron, Brett Christian (“Individual Plaintiffs”), Firearms Policy Coalition, Inc., and Second Amendment Foundation (“Institutional Plaintiffs”) (collectively “Plaintiffs”), by and through the undersigned attorneys, file this Complaint against Defendants State Police

Superintendent Kevin P. Bruen and Erie County District Attorney John J. Flynn (collectively “Defendants”) in their official capacities as the state and local officials responsible under New York law for administering and enforcing the State’s laws and regulations governing carriage of firearms in public. In support of their Complaint against Defendants, Plaintiffs hereby allege as follows:

## INTRODUCTION

1. The Constitution guarantees “the right of the people to keep and bear Arms.” U.S. CONST. amend. II. When the People, by enacting that amendment, enshrined in their governing charter the right to “carry weapons in case of confrontation” for the “core lawful purpose of self-defense,” *District of Columbia v. Heller*, 554 U.S. 570, 592, 630 (2008), they did not mean to leave the freedom to exercise that right at the mercy of the very government officials whose hands they sought to bind. Instead, “the right to keep and bear arms” ranks “among those fundamental rights necessary to our system of ordered liberty” and consequently “certain policy choices” are definitively “off the table.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 778, 790 (2010) (quoting *Heller*, 554 U.S. at 636).

2. Plaintiffs are law-abiding citizens of New York who wish to exercise their fundamental, individual right to bear arms in public for self-defense and would, but for Defendants’ enforcement of the unconstitutional laws, regulations, policies, practices, and customs at issue in this case.

3. On June 23, 2022, the United States Supreme Court held in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. \_\_\_, 142 S. Ct. 2111 (2022), “consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense *outside the home*,” and accordingly declared unconstitutional New York’s “proper cause”

discretionary carry licensing scheme, *id.* at 2122.

4. On July 1, 2022, the State of New York responded to *Bruen* in an act of defiance of the Supreme Court, enacting Senate Bill S51001 (“S51001”) (June 30, 2022, Extraordinary Session), a true and correct copy of which is attached as Exhibit A. S51001 replaced one unconstitutional licensing scheme with another, and worse, implemented expansive new criminal laws that ban carry of firearms in so-called “sensitive locations” and presumptively on most property in the state—even for those who lawfully acquire and possess a license under the State’s onerous new licensing scheme. The State’s designation of these “sensitive” or “restricted” locations constitutes a *de facto* ban on the carriage of loaded, operable handguns for self-defense. S51001 generally took effect on September 1, 2022.

5. As explained by New York Governor Kathy Hochul in her July 1, 2022 press statement, among other new or changed regulations, S51001 increases eligibility requirements in the carry license permitting process and restricts “the carrying of concealed weapons in sensitive locations and establish[es] that private property owners must expressly allow a person to possess a firearm, rifle, or shotgun on their property[.]”<sup>1</sup> “Individuals who carry concealed weapons in sensitive locations or in contravention of the authority of an owner of private property will face criminal penalties.” *Id.* “The law also makes ‘no carry’ the default for private property, unless deemed permissible by property owners.” *Id.*

6. New York’s carry regulations in designated “sensitive locations” go far beyond any constitutionally relevant historical justification, and “ordinary, law-abiding citizens,” like and

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<sup>1</sup> NEW YORK GOV.’S PRESS OFFICE, *Governor Hochul Signs Landmark Legislation to Strengthen Gun Laws and Bolster Restrictions on Concealed Carry Weapons in Response to Reckless Supreme Court Decision*, July 1, 2022, available at <https://on.ny.gov/3nXWrvA> (last visited August 31, 2022).

including Plaintiffs, are again prevented from carrying handguns in public for self-defense in almost all corners of the State, except in what Governor Hochul said were, “probably some streets.”<sup>2</sup> This makes a mockery of the Supreme Court’s holding in *Bruen*, which reaffirmed that personal security extends to more than just “those . . . who work in marbled halls, guarded constantly by a vigilant and dedicated police force,” *Peruta v. California*, 137 S. Ct. 1995, 1999 (2017) (Thomas, J., dissenting from the denial of certiorari), to include ordinary, law-abiding Americans “outside the home,” *Bruen*, 142 S. Ct. at 2122. Moreover, New York’s designation of private property as a “restricted location[ ]” is an unprecedented designation that essentially deputizes all property owners in the State to effectuate a carry ban that the Supreme Court most recently invalidated in *Bruen*. The Second Amendment, however, cannot be so easily manipulated. Since the State’s expansive restrictions on carriage in public do not allow typical law-abiding citizens to carry a loaded and operable handgun outside their home in all sorts of places of everyday life, these restrictions deny them any meaningful right to bear arms.

7. New York’s laws, regulations, policies, practices, and customs individually and collectively deny millions of individuals who reside in the State—including Individual Plaintiffs, Institutional Plaintiffs’ similarly-situated members, and others like them—their fundamental, individual right to bear loaded, operable handguns outside the home.

8. Defendants clearly disfavor the right to keep and bear arms. But “[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Bruen*, 142 S. Ct. at 2129 (quoting *Heller*, 554 U. S., at 634).

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<sup>2</sup> LUIS FERRÉ-SADURNÍ AND GRACE ASHFORD, *N.Y. Democrats to Pass New Gun Laws in Response to Supreme Court Ruling*, N.Y. TIMES, June 30, 2022, available at <https://nyti.ms/3yTp2Yj> (last visited August 31, 2022).

9. Plaintiffs John Boron, Brett Christian, Firearms Policy Coalition, Inc., and Second Amendment Foundation thus bring this action to vindicate the fundamental rights that Defendants threaten to infringe.

### **PARTIES**

10. Plaintiff John Boron is a natural person, an adult over the age of 21, a citizen of the United States, and a resident and citizen of the State of New York. Plaintiff Boron is a law-abiding, responsible gun owner and is not prohibited under state or federal law from acquiring or possessing firearms or ammunition. Plaintiff Boron has a license to carry a handgun issued pursuant to New York law by Erie County. Plaintiff Boron is subject to Defendants' enforcement of the State's restrictions on his right to bear arms in public, including those provisions preventing him from carrying in most all public places. Plaintiff Boron is a member of Plaintiffs FPC and SAF. Plaintiff Boron resides in Depew, New York 14043.

11. Plaintiff Brett Christian is a natural person, an adult over the age of 21, a citizen of the United States, and a resident and citizen of the State of New York. Plaintiff Christian is a law-abiding, responsible gun owner and is not prohibited under state or federal law from acquiring or possessing firearms or ammunition. Plaintiff Christian has a license to carry a handgun issued pursuant to New York law by Erie County. Plaintiff Christian is subject to Defendants' enforcement of the State's restrictions on his right to bear arms in public, including those provisions preventing him from carrying in most all public places. Plaintiff Christian is a member of Plaintiffs FPC and SAF. Plaintiff Christian resides in Cheektowaga, NY 14225.

12. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a non-profit organization incorporated under the laws of Delaware with a place of business in Clark County, Nevada. The purposes of FPC include defending and promoting Second Amendment rights, advancing

individual liberty, and restoring freedom. FPC serves its members and the public through legislative advocacy, grassroots advocacy, litigation and legal efforts, research, education, outreach, and other programs. FPC has members in the State of New York. FPC's members include individuals who are not prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm or ammunition. FPC's members are adversely and directly harmed by Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein. The interests that FPC seeks to protect in this lawsuit are germane to the organization's purposes, and, therefore, FPC sues on behalf of its members, including the Individual Plaintiffs herein. Plaintiff FPC has members who have been denied their right to carry by operation of Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein. But for Defendants' enforcement of the laws and regulations challenged herein, FPC's non-prohibited members in New York would carry a firearm outside the home for self-defense.

13. Plaintiff Second Amendment Foundation ("SAF") is a nonprofit educational foundation incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF seeks to preserve the effectiveness of the Second Amendment through education, research, publishing, and legal action programs focused on the constitutionally protected right to possess firearms and firearm ammunition, and the consequences of gun control. SAF has over 700,000 members and supporters nationwide, including thousands of members in New York. SAF brings this action on behalf of those members, including the named Plaintiffs herein. SAF's members are adversely and directly harmed by Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein.

14. FPC and SAF recognize that "[i]t is the law of this Circuit that an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983."

*Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011). FPC and SAF contend that this circuit precedent is erroneous and should be overruled by a court competent to do so.

15. FPC, as an organization, has been directly injured by the enactment of S51001 and Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein. FPC has and continues to spend time and other resources, including funding, addressing and responding to the enactment of S51001, consuming resources that would have been directed elsewhere. For example, FPC has incurred costs in legal fees analyzing how S51001 affects its members and time in preparing an informational memorandum for its members in New York. FPC has also designed and implemented a New York Hotline program to answer questions and provide legal information to its New York members and the public. FPC will incur ongoing expenses to operate the Hotline, including internal FPC staff time and expenses related to outside counsel who will assist with the Hotline. FPC expects to continue to be required to expend additional resources addressing New York's laws affecting the right to keep and bear arms, including those enacted in S51001, unless and until New York's unconstitutional laws are enjoined.

16. SAF, as an organization, has been directly injured by the enactment of S51001 and Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein. SAF has spent time addressing inquiries about S51001, consuming resources that would have been directed elsewhere. For example, SAF is creating a hotline to answer questions and provide legal information to its New York members and the public. SAF will incur ongoing expenses to operate the hotline, including internal SAF staff time and expenses related to outside counsel who will assist with the hotline. SAF expects to continue to be required to expend additional resources addressing New York's laws affecting the right to keep and bear arms, including those enacted in S51001, unless and until New York's unconstitutional laws are enjoined.

17. Defendant Kevin Bruen is the Superintendent of the New York State Police. As Superintendent, he exercises, delegates, or supervises all the powers and duties of the New York Division of State Police, which is responsible for executing and enforcing New York’s laws and regulations governing the carrying of firearms in public, including prescribing the form for Handgun Carry License applications. Defendant Bruen’s official address is New York State Police, 1220 Washington Avenue, Building 22, Albany, NY 12226. Defendant Bruen is sued in his official capacity.

18. Defendant John J. Flynn is the Erie County District Attorney and chief prosecutor of the county. Defendant Flynn “is the prosecutorial officer with the responsibility to conduct all prosecutions for crimes and offenses cognizable by the courts of the county in which he serves.” *People v. Di Falco*, 44 N.Y.2d 482, 487, 377 N.E.2d 732, 735 (1978); N.Y. CNTY. LAW § 700(1). Defendant Flynn’s official address is 25 Delaware Ave, Buffalo, NY 14202. Defendant Flynn is sued in his official capacity.

### **JURISDICTION AND VENUE**

19. This Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. §§ 1331 and 1343.

20. Plaintiffs seek remedies under 28 U.S.C. §§ 1651, 2201, 2202, and 42 U.S.C. §§ 1983 and 1988, as this action seeks to redress the deprivation under color of the laws, statutes, ordinances, regulations, customs, and usages of the State of New York, of the rights, privileges or immunities secured by the United States Constitution.

21. Venue lies in this Court under 28 U.S.C. § 1391, as at least one Defendant is a resident of this District and the events giving rise to Plaintiffs’ causes of action arose or exist in this District in which the action is brought.



## FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS

### *The Second Amendment*

22. In *Bruen*, the Supreme Court explained that the “Second Amendment’s plain text . . . presumptively guarantees . . . a right to ‘bear’ arms in public for self-defense.” *Bruen*, 142 S. Ct. at 2135. After all, “[m]any Americans hazard greater danger outside the home than in it.” *Id.*

23. Since the Second Amendment is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,” States can exercise regulatory authority in certain narrow circumstances. When doing so, the government must “affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2127. In fact, *Bruen* could not be clearer in its holding that it is *the government* that bears the burden of justifying its firearm regulations. *See id.* at 2130 (“The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”); *id.* at 2135 (explaining “the burden falls on respondents”); *id.* at 2138 (holding that “respondents have failed to meet *their burden* to identify an American tradition” (emphasis added)).

24. In *Bruen*, the Supreme Court provided specific guidance to lower courts on how States may and may not restrict the carrying of firearms in “sensitive places.”

25. In *Bruen*, the Supreme Court elaborated on what it had termed “sensitive places” in *Heller*, i.e., those discrete areas “such as schools and government buildings” where “longstanding” “laws forbid[] the carrying of firearms.” *Id.* at 2133 (quoting *Heller*, 554 U.S. at 626). And the Court instructed lower courts (and by extension States like New York) to “use analogies to *those* historical regulations of ‘sensitive places’ to determine [if] modern regulations prohibiting the carry of firearms in *new* and analogous places are constitutionally permissible.” *Id.*

(emphasis added). The Court also explained what courts and States could not do. In *Bruen*, New York attempted to characterize its pre-*Bruen* ban of public carry as merely a “sensitive place” restriction. *Id.* at 2133–34. There, the State attempted to define “sensitive places” as “all places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available.” *Id.* (internal quotation marks omitted). The Supreme Court rejected New York’s capacious designation of sensitive places. “[E]xpanding the category of ‘sensitive places’ simply to all places of public congregation that are not isolated from law enforcement defines the category of ‘sensitive places’ *far too broadly.*” *Id.* (emphasis added). Under *Bruen*, the designation of “sensitive places” cannot be used to “in effect exempt cities from the Second Amendment” or “eviscerate the general right to publicly carry arms for self-defense.” *Id.* at 2134. Instead, the only permissible “sensitive places” are those with a “historical basis.” *Id.*

#### *New York’s Regulatory Scheme*

26. New York law generally forbids any person to “possess[ ] any firearm,” N.Y. PENAL LAW § 265.01(1), without first obtaining “a license therefor,” *id.* § 265.20(a)(3). Violating this ban is a class A misdemeanor, punishable by a fine of \$1,000 or less or up to a year in prison. *Id.* §§ 70.15(1), 80.05(1), 265.01. Possessing a loaded firearm without a license is a class C felony, punishable by a fine of up to \$5,000 or between one and fifteen years of imprisonment. *Id.* §§ 70.00(2)(c) & (3)(b), 80.00(1), 265.03.

27. Not only does New York’s draconian firearm regulatory scheme impose great risk of serious criminal penalties, a violation can also result in a lifetime ban on the exercise of the right to keep and bear firearms under state and federal law.

28. New York’s ban is subject to minor exceptions for active-duty members of the military, police officers, and the like. *Id.* § 265.20. An ordinary member of the general public who

wishes to carry a handgun outside the home for purposes of self-protection, however, can only do so if he obtains a license to “have and carry [a handgun] concealed” (a “carry license”), pursuant to Section 400.00(2)(f) of New York’s Penal Law. A person seeking such a license must submit an application—on a form approved by Defendant Bruen—to the Licensing Officer for the city or county where he resides. *Id.* § 400.00(3)(a). No license is available to authorize openly carrying handguns within the State.

29. S51001 “expands eligibility requirements for concealed carry permit applicants. Expanded application requirements include character references, firearm safety training courses, live fire testing, and background checks. Additionally, applicants who have documented instances of violent behavior will be disqualified from obtaining a concealed carry permit. Disqualifying criteria also includes misdemeanor convictions for weapons possession and menacing, recent treatment for drug-related reasons, and for alcohol-related misdemeanor convictions.” (Gov. Hochul’s July 1, 2011 press statement regarding S51001, *supra.*).

30. Even after qualifying for a license, New York’s regulatory scheme enforced by Defendants prevents licensed individuals from carrying in most public places.

31. Attempting to take advantage of the narrow circumstances in which governments may restrict the public carry of firearms for self-defense in “sensitive places,” New York in S51001 has *broadly* defined “sensitive locations” and invented so-called “restricted locations” to bar the carrying of firearms in the vast majority of New York State.

32. Under S51001, “sensitive locations” include:

- a. “any place owned or under the control of federal, state or local government, for the purpose of government administration, including courts;”“ any location

providing health, behavioral health, or chemical dependence care or services;”  
“any place of worship or religious observation;”

- d. “libraries, public playgrounds, public parks, and zoos;”
- e. “the location of any program licensed, regulated, certified, funded, or approved by the office of children and family services that provides services to children, youth, or young adults, any legally exempt childcare provider; a childcare program for which a permit to operate such program has been issued by the department of health and mental hygiene pursuant to the health code of the city of New York;”
- f. “nursery schools, preschools, and summer camps;
- g. “the location of any program licensed, regulated, certified, operated, or funded by the office for people with developmental disabilities;”
- h. “the location of any program licensed, regulated, certified, operated, or funded by office of addiction services and supports;”
- i. “the location of any program licensed, regulated, certified, operated, or funded by the office of mental health;”
- j. “the location of any program licensed, regulated, certified, operated, or funded by the office of temporary and disability assistance;”
- k. “homeless shelters, runaway homeless youth shelters, family shelters, shelters for adults, domestic violence shelters, and emergency shelters, and residential programs for victims of domestic violence;”
- l. “residential settings licensed, certified, regulated, funded, or operated by the department of health;”

- m. “in or upon any building or grounds, owned or leased, of any educational institutions, colleges and universities, licensed private career schools, school districts, public schools, private schools licensed under article one hundred one of the education law, charter schools, non-public schools, board of cooperative educational services, special act schools, preschool special education programs, private residential or non-residential schools for the education of students with disabilities, and any state-operated or state-supported schools;”
- n. “any place, conveyance, or vehicle used for public transportation or public transit, subway cars, train cars, buses, ferries, railroad, omnibus, marine or aviation transportation; or any facility used for or in connection with service in the transportation of passengers, airports, train stations, subway and rail stations, and bus terminals;”
- o. “any establishment issued a license for on-premise consumption pursuant to article four, four-A, five, or six of the alcoholic beverage control law where alcohol is consumed and any establishment licensed under article four of the cannabis law for on-premise consumption;”
- p. “any place used for the performance, art entertainment, gaming, or sporting events such as theaters, stadiums, racetracks, museums, amusement parks, performance venues, concerts, exhibits, conference centers, banquet halls, and gaming facilities and video lottery terminal facilities as licensed by the gaming commission;”
- q. “any location being used as a polling place;”

- r. “any public sidewalk or other public area restricted from general public access for a limited time or special event that has been issued a permit for such time or event by a governmental entity, or subject to specific, heightened law enforcement protection, or has otherwise had such access restricted by a governmental entity, provided such location is identified as such by clear and conspicuous signage;”
- s. “any gathering of individuals to collectively express their constitutional rights to protest or assemble;”
- t. “the area commonly known as Times Square, as such area is determined and identified by the city of New York; provided such area shall be clearly and conspicuously identified with signage.” *See* N.Y. PENAL LAW § 265.01-e(2)(a)–(t).

33. New York makes the possession of firearms in these “sensitive locations” a Class E felony when an otherwise law-abiding, licensed firearm owner “knows or reasonably should know such location is a sensitive location.” N.Y. PENAL LAW § 265.01-e.

34. New York has also established what it terms “restricted locations.” But instead of some ascertainable category of locations, this is a designation that applies to *all* “private property.” All private property in the State of New York is “a restricted location” where public carry of firearms for self-defense is unlawful—unless “the owner or lessee of such property” has “permitted” “possession by clear and conspicuous signage indicating that the carrying of firearms, rifles, or shotguns on their property is permitted or has otherwise given express consent.” S51001, §5; N.Y. PENAL LAW § 265.01-d.

35. If an otherwise law-abiding, licensed firearm owner possesses a firearm and “*enters into or remains on or in private property*” where the owner or lessee has not put up the requisite conspicuous sign or given *express* consent, he or she has committed a Class E Felony. S51001, §5; N.Y. PENAL LAW § 265.01-d (emphasis added).

***The Challenged “Carry Provisions”***

36. Collectively, New York’s “sensitive location” and “restricted location” designations, and Defendants’ enforcement of them, are a *de facto* ban on the fundamental, individual right to bear arms in public *virtually everywhere*. Indeed, asked by reporters where New York carry license-holders would be able to legally exercise their rights after enactment of S51001, New York Governor Kathy Hochul could only affirm that New Yorkers have their Second Amendment rights to peaceably carry for self-defense on “[p]robably some streets.” Accordingly, typical law-abiding citizens of New York—the vast majority of responsible citizens—effectively remain subject to a flat ban on carrying handguns outside the home for the purpose of self-defense in vast swaths of the State.

37. Without conceding the lawfulness of any particular provision, Plaintiffs herein challenge the following “sensitive location” and “restricted location” provisions of New York law:

- a. Penal Law § 265.01-e(2)(d) (public parks);
- b. Penal Law § 265.01-e(2)(n) (public transportation);
- c. Penal Law § 265.01-d (default anti-carry rule), with respect to places open to the public.

These provisions, collectively referred to as the Carry Provisions, as well as Defendants’ regulations, policies, and enforcement practices implementing them, are particularly egregious

violations of Plaintiffs’ constitutional rights to exercise their right to bear arms and carry them in public for purposes of self-defense.

38. *Public Parks.* Under Penal Law § 265.01-e(2)(d), New York imposes criminal liability on carry licensees who exercise their right to bear arms in “public parks.” This is a prohibition of enormous scope and restricts carriage in a manner that simply cannot be “justif[ied]” as “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2130; *see also Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632, 658 (Del. 2017) (“State Parks and State Forests . . . present a far different ‘place restriction’ than one limiting possession of firearms in a school or courthouse—traditional ‘sensitive places.’”).

- a. S51001 does not itself define “public parks” but the ordinary meaning of park is capacious, meaning a separate area of land for the people to use. *See* “Park,” OXFORD LEARNER’S DICTIONARIES (“[A]n area of public land in a town or a city where people go to walk, play, and relax.”); “Park,” DICTIONARY.COM (“[A]n area of land, usually in a largely natural state, for the enjoyment of the public, having facilities for rest and recreation, often owned, set apart, and managed by a city, state, or nation.”); “Park,” MERRIAM-WEBSTER DICTIONARY (“[A]n enclosed piece of ground stocked with game and held by royal prescription or grant; a tract of land that often includes lawns, woodland, and pasture attached to a country house and is used as a game preserve and for recreation; a piece of ground in or near a city or town kept for ornament and recreation; an area maintained in its natural state as a public property.”); *cf.* H. L. A. HART, *Positivism and the Separation of Law and Morals*, 71 Harv. L. Rev. 593, 607 (1958). And New York has a long history of setting aside land for



public purposes as “parks.” “A park is, in its strict sense, a piece of ground inclosed for purposes of pleasure, exercise, amusement or ornament.” *Perrin v. New York Cent. R.R. Co.*, 36 N.Y. 120, 124 (1867). Or as the New York Court of Appeals said more recently, a park is “a recreational pleasure area set aside to promote public health and welfare.” *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623, 629 (2001).

- b. Parks comes in all shapes and sizes, and include appurtenances that render them useful for the public, like trails, paths, roads, campsites, and parking. For instance, the City of New York defines “park” as “public parks, beaches, waters and land under water, pools, boardwalks, playgrounds, recreation centers and all other property, equipment, buildings and facilities now or hereafter under the jurisdiction, charge, or control of the Department [of Parks].” NEW YORK CITY, N.Y., RULES, TIT. 56, § 1-02. And, of course, parks also have “park paths,” which include “any road, path or trail through or within a park that is not used for vehicular traffic” and parks include “parks waters,” which not only constitute pools and bathing areas, but also any “tributary, brook, stream, [or] ocean” in or flowing into the park. *Id.* Thus, the scope of S51001 designation of “public parks” as “sensitive locations” where public carry for self-defense is illegal is profound.
- c. For instance, the State of New York Office of Parks, Recreation and Historic Preservation “oversees more than 250 parks, historic sites, recreational trails, golf course, boat launches and more, which are visited by 78 million people annually.” See NEW YORK STATE PRESS RELEASE, *Governor Hochul*

*Announces 130 Acres Added to Sterling Forest State Park in Orange County* (Jan. 22, 2022), available at <https://on.ny.gov/3q4kyK0> (last visited August 31, 2022). The State Park system alone accounts for “over 350,000 acres of park land” in New York State. See NY STATE PARKS BLOG, *Celebrate Earth Day With State Parks!*, (April 20, 2022), available at <https://bit.ly/3R8LowE> (last visited August 31, 2022). Thus, “[f]rom the shores of Long Island to the mighty Niagara Falls,” Plaintiffs cannot possess their firearms for self-defense in any part of any state park. See N.Y. PARKS REC.& HIST. PRESERV., available at <https://on.ny.gov/3Q9xmJH> (last visited August 31, 2022).

- d. Upon information and belief, “public park” under S51001 also includes the “Adirondack Park,” which is under the joint responsibility of the Adirondack Park Agency and the New York State Department of Environmental Conservation. See ADIRONDACK PARK AGENCY, *The Adirondack Park*, available at [https://apa.ny.gov/about\\_park/](https://apa.ny.gov/about_park/) (last visited August 31, 2022). As of May 2014, Adirondack Park consisted of a “Total Park” acreage of 5,821,421 acres of which the state land is 2,551,669 acres. See *Adirondack Park Land Use Classification Statistics* (May 21, 2014), available at <https://on.ny.gov/3pXDbPM> (last visited August 31, 2022). The State even classifies over a million acres as “wilderness.” *Id.* Yet in this Park, which represents nearly *one-third* of the entire land area of New York State—an area a young Theodore Roosevelt once described as having a quality of “decided wildness”—Plaintiffs cannot lawfully carry firearms for self-defense. See

THEODORE ROOSEVELT AND H.D. MINOT, *The Summer Birds of the Adirondacks in Franklin County, N.Y.* (1877).

- e. Upon information and belief, “public park” under S51001 also includes the “Catskill Park,” which is managed by the New York State Department of Environmental Conservation. The total park is approximately 705,000 acres of which 143,000 is classified as “wilderness” and 130,000 as “wild forest.” See STATE OF NEW YORK, Catskill Park State Land Master Plan (Aug. 2008, amended 2014), available at <https://on.ny.gov/3wJoQKL> (last visited August 31, 2022). Here too, Plaintiffs cannot lawfully carry firearms for self-defense. The vast reaches of the Catskills are now a “sensitive location,” a remarkable (and implausible) transformation. Cf. WASHINGTON IRVING, *Rip Van Winkle* (1820) (after falling asleep in the “Kaatskill mountains,” Rip Van Winkle awoke to world where “everything’s changed”).<sup>3</sup>

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<sup>3</sup> The State Police, in an online FAQ, has said “[c]ertain areas of *the parks* are not ‘sensitive locations’” but the State Police failed to indicate which parts of these *parks*, which are otherwise covered by the plain language of the statute, are covered. See *Frequently Asked Questions Regarding Recent Changes To New York State Firearm Laws*, NEW YORK STATE POLICE (Aug. 27, 2022), available at <https://on.ny.gov/3cY25fl> (last visited Sept. 12, 2022) (emphasis added). The New York State Department of Environmental Conservation has only indicated that hunting is allowed. See *Frequently Asked Questions Regarding Recent Changes to New York State Firearm Laws*, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (Sept. 1, 2022), available at <https://on.ny.gov/3BBIKvn> (last visited Sept. 12, 2022). Since hunting is an exception to the sensitive locations provisions, the Department’s guidance that *only* hunting is permissible indicates that New Yorkers carrying for self-defense, but who are not actively engaged in hunting, are unconstitutionally barred from carrying in both Adirondacks Park and Catskills Park. Cf. *Kimmel v. State of New York*, 29 N.Y.3d 386, 394, 80 N.E.3d 370, 375 (2017) (“[W]here a statute creates provisos or exceptions as to certain matters the inclusion of such provisos or exceptions is generally considered to deny the existence of others not mentioned” (internal quotation marks omitted)).

- f. “In contrast to a permissible sensitive place such as a courthouse, where visitors are screened by security,” most public parks “do not have controlled entry points,” can be “easily enter[ed]” with a weapon “either intentionally or by inadvertently wandering across a [park] boundary while exercising the right to . . . licensed concealed carry.” *Bridgeville Rifle & Pistol Club* 176 A.3d at 659. Further, “[w]hereas courthouses are supervised by law enforcement personnel or easily accessible to law enforcement and other emergency responders” many parks are “relatively remote” and “the intervention of society on [individuals’] behalf may be too late to prevent injury.” *Id.*

39. *Public Transportation.* As relevant here, under Penal Law § 265.01-e(2)(n), New York imposes criminal liability on carry licensees who exercise their right to bear arms in “any place, conveyance, or vehicle used for public transportation or public transit . . . train cars, buses, ferries, railroad, . . . [or] marine . . . transportation; or any facility used for or in connection with service in the transportation of passengers, . . . train stations, . . . and rail stations, and bus terminals.” These blanket prohibitions on carrying in and around these common modes of transportation cannot be “justif[ied]” as “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2130.

- a. New Yorkers ride modes of public transit more than 3.8 billion times annually in over 130 transit systems throughout New York State. *See* NEW YORK PUBLIC TRANSIT ASSOCIATION, INC., *Public Transit Facts*, available at <https://bit.ly/3AFgYem> (last visited August 31, 2022).
- b. Public transportation is a vital part of everyday life with “[a]lmost 60 percent of people who ride public transit . . . commuting to and from work.” *See id.*

- c. In fact, there are many common scenarios where individuals, like Plaintiffs and others, may need to bring firearms for self-defense in public transportation areas that have been designated as “sensitive locations.” For instance, individuals who get off work and have to commute by bus. “When [the individuals] arrive at . . . the bus stop, they have to walk some distance through a high-crime area.” *Bruen*, Oral Arg. Tr. at 67 (Nov. 03, 2021). Nevertheless, these individuals are barred from carrying a firearm for self-defense because their mode of transit to earn their livelihood happens to be public.
- d. The prohibition on carrying for self-defense in public transportation will disproportionately burden low-income New Yorkers. “Low-income workers rely more on public transit due to limited access to automobiles and the cost of maintaining a car.” FEDERAL TRANSIT AGENCY, *Transportation Needs of Disadvantaged Populations: Where, When, and How?* at 30 (Feb. 2013), available at <https://bit.ly/3wJLfrk> (last visited August 31, 2022). In particular, public transportation is needed for “many service jobs that are often taken by low-income workers who do not have a regular 9-to-5 schedule.” *Id.* at 3–4. These second or third shift workers, commuting in the odd hours of the night, are left without the ability to carry for self-defense or in-case of confrontation. Yet without question, the Second Amendment extends to “all Americans,” *Heller*, 554 U.S. at 580—not just the well-heeled with their own vehicles.
- e. “In contrast to a permissible sensitive place such as a courthouse, where visitors are screened by security,” many modes of public transportation “do not have controlled entry points.” *Bridgeville Rifle & Pistol Club*, 176 A.3d at 659.

Further, “[w]hereas courthouses are supervised by law enforcement personnel or easily accessible to law enforcement and other emergency responders,” transit stops may be comparatively “remote” and “the intervention of society on [individuals’] behalf may be too late to prevent injury.” *Id.*

40. *Private Property Open to the Public.* Under S51001, New York treats as a separate crime, the otherwise lawful possession of a firearm in so-called “restricted locations.” This provision is unconstitutional to the extent that it establishes a default ban on the carry of firearms for self-defense in areas open to members of the public.

- a. As the Supreme Court reaffirmed in *Bruen*, the Second Amendment itself establishes a presumption that Plaintiffs and other licensed, law-abiding citizens have a “right to ‘bear’ arms in public for self-defense.” *Bruen*, 142 S. Ct. at 2135.
- b. New York has now *flipped* the presumption by dictating that all private property—even in those locations open to members of the public—are now presumptively off-limits without conspicuous signage or express consent.
- c. The State’s establishment of an anti-carry presumption for all private property is a massive restriction on the right to bear arms. After all, it establishes a “default rule” of interaction with strangers, i.e., members of the public coming to a property open to the public, and in these situations “default rules” are particularly “sticky.” *See generally* OMRI BEN-SHAHAR & JOHN A. E. POTTOW, *On the Stickiness of Default Rules*, 33 FLA. ST. L. REV. 651 (2006), available at <https://bit.ly/3pWXM6Y> (last visited August 31, 2022). By “sticky,” legal scholars mean that individuals have a well-known tendency to stick by the

default rule *even when* they would otherwise take a different position. *Id.* at 651–54. New York has established a default rule that imposes an additional and significant burden on those law-abiding citizens seeking to exercise their Second Amendment right to carry publicly for self-defense.

- d. The State’s presumption is tantamount to other state action that would similarly be violative of Constitutional rights. The State could not establish a default rule that praying before a meal is unlawful unless a restaurateur expressly consents. The State could not establish a default rule that an individual cannot wear a political t-shirt in an office park unless a leasing agent expressly consents. As in those situations, the Bill of Rights poses no obstacle to a property owner *independently* banning praying or banning political t-shirts (even if other laws might), just as a property owner can *independently* decide to bar invitees from carrying firearms. But, as in all those situations, the State may not presume to make the property owner’s decision for them and place a thumb on the scale against the exercise of constitutional rights. Moreover, as relevant under *Bruen*, New York will be unable to demonstrate that this presumption is “part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” 142 S. Ct. at 2127.
- e. It is not hard to see how this “sticky” default rule will effectively disable Plaintiffs and other New Yorkers from exercising their constitutional right to carry. For instance, the property owner who does not know about the new presumption will fail to post clear and conspicuous signage permitting the carrying of firearms or otherwise fail to give the express consent that the

property owner does not know is needed. A property owner who is indifferent to carrying firearms will fail to post clear and conspicuous signage or provide express consent, even though before the enactment, he would have allowed individuals to carry as a result of being indifferent to ban it. Further, a property owner, who would like to allow the carry of firearms, will fail to post the required signage or give the required consent for fear of stigma and opprobrium from other customers by having to publicly proclaim support for customers' exercise of their constitutional right to carry for self-defense.

- f. Far from honoring the Second Amendment as the Supreme Court instructed in *Bruen*, the State's new default rule broadly sweeps away the Second Amendment rights of New Yorkers and effectively shuts off most public areas from carrying for self-defense —save “[p]robably some streets.”

#### ***The Carry Provisions Effects on Plaintiffs***

41. Plaintiff Boron is presently licensed under New York law to carry a concealed firearm. Boron desires to carry his firearm for self-defense purposes when going about his day-to-day life. Under the Carry Provisions, Boron will be prevented from doing so. In particular, Boron will be unable to carry for self-defense when taking his weekly walk with his dog to a local park near his house, as he typically does and would intend to continue to do so, but for the enactment and enforcement of S51001. The enactment and enforcement of S51001 forces Boron to either forego carrying while walking his dog or change the time he goes to the park when he perceives it to be safe. Further, the Carry Provisions will prevent Boron from riding public transportation while carrying for self-defense, as he would intend to do, but for the enactment and enforcement of S51001. He will be unable to visit downtown Buffalo, as he commonly does every several months



to go out to dinner, by taking the NFTA Metro Rail and carry for self-defense, which is particularly problematic because of Boron's concerns for his public safety when he gets off the train in Buffalo. Despite his Second Amendment rights, S51001's designation of these spaces as "sensitive locations" disables him from exercising those rights.

42. Further, Boron will be unable to carry his firearm on his person throughout the State because of the State's designation of private property, which is open to all members of the public, as "restricted locations." Boron typically brings his firearm with him on private property open to the public, such as on early morning visits to the ATM, weekly visits to gas stations, and monthly visits to hardware stores, and he intended to continue to do so, but for the enactment and enforcement of S51001. S51001's designation of private property, including private property which is open to the public, as a restricted location effectively prevents Boron from going about his daily life in the state of New York while lawfully carrying his firearm for purposes of self-defense. For example, Boron is an avid motorcyclist, riding multiple times a week when weather permits. After S51001's effective date, when riding in upstate New York, including predominantly rural areas, Boron will be unable to take any bathroom breaks, pick-up or buy food, or unable to get gas if he "possesses a firearm" and there is not "clear and conspicuous signage" indicating that the "carrying of firearms . . . is permitted." Moreover, since S51001 bars even "*entering*" these locations, Boron will often need to stop carrying for self-defense before he can get physically close enough to see if any "clear and conspicuous signage" exists. If the motorcycle he is riding lacks a safe and secure depository for his firearm, he will be unable to stop at all to even *check* the signage. This effectively means Boron must leave his firearm at home. Boron is particularly concerned that if he encounters mechanical difficulties with his motorcycle, leaving his firearm at home will leave him defenseless while waiting multiple hours on the side of a road for a service vehicle or a public

safety response. Alternatively, if Boron's motorcycle were to have a safe and secure depository where it would be lawful to store a firearm, the process of disabling and storing the firearm would risk putting Boron in an uncomfortable situation with passersby observing him do so.

43. Plaintiff Brett Christian is presently licensed under New York law to carry a concealed firearm. Christian desires to carry his firearm for self-defense purposes when going about his day-to-day life. Under the Carry Provisions, Christian will be prevented from doing so. In particular, Christian will be unable to carry for self-defense when present in local parks or when hiking on trails in largely wooded and marshy areas as he does, weather permitting, a few times each month. These places can be far removed from any public safety response. Christian would intend to continue to carry for self-defense in parks and when on trails, but for the enactment and enforcement of S51001. Christian will be further unable to visit the Adirondacks, a place he visited before the onset of the Covid pandemic and to which he intended to return in November 2022 (by taking paid time off from work), but he will be unable to return this November and lawfully carry because of S51001. Moreover, on his visits to downtown Buffalo, he will be unable to use public transportation, like NFTA Metro Rail as he does when traffic or events downtown make driving impractical, and carry for self-defense. This is particularly problematic because of Christian's concerns for his public safety when he gets off the train in Buffalo. Despite his Second Amendment rights, S51001's designation of these spaces as "sensitive locations" disables him from exercising those rights.

44. Further, Christian will be unable to carry his firearm on his person throughout the State because of the State's designation of private property, which is open to all members of the public, as "restricted locations." Christian typically brings his firearm with him on private property open to the public, such as weekly visits to gas stations and monthly visits to hardware stores, and

he intended to continue to do so, but for the enactment and enforcement of S51001. S51001's designation of private property, including private property which is open to the public, as a restricted location effectively prevents Christian from going about his daily life in the state of New York while lawfully carrying his firearm for purposes of self-defense. For example, after S51001's effective date, when driving or running errands, Christian will be unable to take any bathroom breaks, pick-up or buy food, or unable to get gas if he "possesses a firearm" and there is not "clear and conspicuous signage" indicating that the "carrying of firearms . . . is permitted." Moreover, since S51001 bars even "*entering*" these locations, Christian will need to disable and store his firearm before he drives his vehicle or walks into the parking lot, which means in some instances, Christian will need to stop carrying for self-defense before he can get physically close enough to see if any "clear and conspicuous signage" exists. The process of disabling and storing the firearm would risk putting Christian in an uncomfortable situation with passersby observing him do so.

45. Plaintiffs FPC and SAF have members and supporters in New York who intend and desire to exercise their right to keep and bear arms by carrying on their person a loaded, operable handgun for lawful purposes, including self-defense, outside their homes, in case of confrontation. But for New York's unconstitutional Carry Provisions, and the Defendants' enforcement thereof, and the severe lifelong and criminal penalties associated with violations of the regulatory scheme, Plaintiffs FPC and SAF's members, including Plaintiffs Boron and Christian, would exercise their right to keep and bear arms by carrying on their person a loaded, operable handgun for lawful purposes, including immediate self-defense in case of confrontation, without the fear or risk of arrest and prosecution, and the loss of their right to keep and bear arms for engaging in constitutionally protected lawful conduct.

46. The challenged Carry Provisions individually and collectively operate to deny Plaintiffs and other typical law-abiding individuals from carrying loaded, operable handguns on their person in case of confrontation for immediate self-defense in public places. As Defendant Bruen’s subordinate First Deputy Superintendent of the State Police has said, state “troopers ‘are standing ready’ to ensure the new laws are followed.” Maki Becker, *Hochul: Last-minute pistol permit seekers may be too late to avoid NY’s new gun requirements*, THE BUFFALO NEWS (Aug 31, 2022), available at <https://bit.ly/3KAf9nG> (last visited Sept. 6, 2022). The State Police further added “an easy message” for individuals like Plaintiffs who seek to carry their firearms: “We have zero tolerance. If you violate this law, you will be arrested. It’s as simple as that.” *Id.*

**COUNT ONE**  
**DEPRIVATION OF CIVIL RIGHTS**  
**RIGHT TO KEEP AND BEAR ARMS**  
**U.S. CONST., AMENDS. II AND XIV**  
**(42 U.S.C. § 1983)**

47. Plaintiffs incorporate herein by reference the foregoing paragraphs as if fully set forth herein.

48. There is an actual and present controversy between the parties.

49. Defendants are implementing and will enforce onerous and burdensome Carry Provisions—N.Y. PENAL LAW §§ 265.01-e(2)(d) (public parks), 265.01-e(2)(n) (public transportation), and 265.01-d (default anti-carry rule) with respect to places open to the public—and all related regulations, policies, and enforcement practices, which, individually and collectively, unconstitutionally burden, delay, chill, and/or deny law-abiding people, like and including Individual Plaintiffs and Institutional Plaintiffs’ similarly situated members, the exercise of their fundamental, individual right to bear arms.

50. Individual Plaintiffs and Institutional Plaintiffs' similarly situated members desire to exercise their right to bear arms by carrying in public for lawful purposes, including immediate self-defense in case of confrontation. "The Second Amendment's plain text . . . presumptively guarantees" Plaintiffs' "right" to do so. *Bruen*, 142 S. Ct. at 2135. In particular, Plaintiffs desire to carry a loaded, operable firearm for immediate self-defense in case of confrontation in the locations as listed and described in Paragraphs 41–44 above, and Plaintiffs would do so, but for their reasonable fear of Defendants' enforcement and threatened enforcement of New York's laws, which could lead to their arrest and prosecution, and if convicted, the loss of their rights.

51. Defendants cannot "identify an American tradition" of firearm regulation "justifying" these Carry Provisions and related regulations, policies, and enforcement practices. *Bruen*, 142 S. Ct. at 2135. Since Defendants cannot "demonstrat[e]" that the Carry Provisions and their enforcement thereof is "consistent with the Nation's historical tradition of firearm regulation," they are unconstitutionally infringing Plaintiffs' Second Amendment rights. *Id.* at 2130.

52. 42 U.S.C. § 1983 creates a cause of action against state actors who deprive individuals of federal constitutional rights under color of state law.

53. Defendants, individually and collectively, and under color of State law at all relevant times, have deprived the fundamental constitutional rights, privileges, and immunities of citizenship of adult persons in the State of New York, including Plaintiffs Boron and Christian, and other members of Plaintiffs FPC and SAF, through Defendants' enforcement and implementation of the Carry Provisions, which has denied, and will continue to deny and prevent by criminal sanction, the exercise of the fundamental right to bear arms in public for self-defense and in case of confrontation unless and until redressed through the relief Plaintiffs seek herein.

54. For all the reasons asserted herein, Defendants have acted in violation of, and continue to act in violation of, 42 U.S.C. § 1983, compelling the relief Plaintiffs seek.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

1. A declaratory judgment that N.Y. PENAL LAW §§ 265.01-e(2)(d) (public parks), 265.01-e(2)(n) (public transportation), and 265.01-d (default anti-carry rule) with respect to places open to the public, and Defendants' enforcement thereof, individually and/or collectively infringe upon Plaintiffs' right to bear arms protected under the Second and Fourteenth Amendments to the United States Constitution and are thus devoid of any legal force or effect;

2. Injunctive relief restraining Defendants and their officers, agents, servants, employees, and all persons in concert or participation with them who receive notice of the injunction, from enforcing N.Y. PENAL LAW §§ 265.01-e(2)(d) (public parks), 265.01-e(2)(n) (public transportation), and 265.01-d (default anti-carry rule) with respect to places open to the public, and their regulations, policies, and practices implementing them;

3. Plaintiffs' attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable law; and,

4. All other and further legal and equitable relief, including injunctive relief, against Defendants as necessary to effectuate the Court's judgment, and/or as the Court otherwise deems just and equitable.

Respectfully submitted this 13th day of September 2022,

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# EXHIBIT A



STATE OF NEW YORK

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Extraordinary Session

IN SENATE

July 1, 2022

Introduced by Sens. STEWART-COUSINS, MYRIE, KAVANAGH -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law, the general business law, the executive law, the civil practice law and rules and the state finance law, in relation to licensing and other provisions relating to firearms

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

1 Section 1. The section heading and subdivisions 1, 1-a, 2, 4, 4-a,  
2 4-b, 10 and 11 of section 400.00 of the penal law, subdivisions 1 and 10  
3 as amended by chapter 1 of the laws of 2013, paragraph (c) of subdivi-  
4 sion 1 as amended by chapter 60 of the laws of 2018, paragraph (j) of  
5 subdivision 1 as amended by chapter 208 of the laws of 2022, subdivision  
6 1-a as added by section 2 of part N of chapter 55 of the laws of 2020,  
7 subdivision 2 as amended by chapter 212 of the laws of 2022, subdivision  
8 4 as amended by chapter 242 of the laws of 2019, subdivision 4-a as  
9 added by chapter 233 of the laws of 1980, subdivision 4-b as added by  
10 chapter 446 of the laws of 1997, paragraph (c) of subdivision 10 as  
11 added by chapter 212 of the laws of 2022, subdivision 11 as amended by  
12 chapter 207 of the laws of 2022, are amended and a new subdivision 4-c  
13 is added to read as follows:

14 [~~Licenses to carry, possess, repair and dispose of~~] Licensing and other  
15 provisions relating to firearms.

16 1. Eligibility. No license shall be issued or renewed pursuant to this  
17 section except by the licensing officer, and then only after investi-  
18 gation and finding that all statements in a proper application for a  
19 license are true. No license shall be issued or renewed except for an  
20 applicant (a) twenty-one years of age or older, provided, however, that  
21 where such applicant has been honorably discharged from the United  
22 States army, navy, marine corps, air force or coast guard, or the  
23 national guard of the state of New York, no such age restriction shall

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

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1 apply; (b) of good moral character, which, for the purposes of this  
2 article, shall mean having the essential character, temperament and  
3 judgement necessary to be entrusted with a weapon and to use it only in  
4 a manner that does not endanger oneself or others; (c) who has not been  
5 convicted anywhere of a felony or a serious offense or who is not the  
6 subject of an outstanding warrant of arrest issued upon the alleged  
7 commission of a felony or serious offense; (d) who is not a fugitive  
8 from justice; (e) who is not an unlawful user of or addicted to any  
9 controlled substance as defined in section 21 U.S.C. 802; (f) who being  
10 an alien (i) is not illegally or unlawfully in the United States or (ii)  
11 has not been admitted to the United States under a nonimmigrant visa  
12 subject to the exception in 18 U.S.C. 922(y)(2); (g) who has not been  
13 discharged from the Armed Forces under dishonorable conditions; (h) who,  
14 having been a citizen of the United States, has not renounced his or her  
15 citizenship; (i) who has stated whether he or she has ever suffered any  
16 mental illness; (j) who has not been involuntarily committed to a facil-  
17 ity under the jurisdiction of an office of the department of mental  
18 hygiene pursuant to article nine or fifteen of the mental hygiene law,  
19 article seven hundred thirty or section 330.20 of the criminal procedure  
20 law or substantially similar laws of any other state, section four  
21 hundred two or five hundred eight of the correction law, section 322.2  
22 or 353.4 of the family court act, has not been civilly confined in a  
23 secure treatment facility pursuant to article ten of the mental hygiene  
24 law, or has not been the subject of a report made pursuant to section  
25 9.46 of the mental hygiene law; (k) who has not had a license revoked or  
26 who is not under a suspension or ineligibility order issued pursuant to  
27 the provisions of section 530.14 of the criminal procedure law or  
28 section eight hundred forty-two-a of the family court act; (l) in the  
29 county of Westchester, who has successfully completed a firearms safety  
30 course and test as evidenced by a certificate of completion issued in  
31 his or her name and endorsed and affirmed under the penalties of perjury  
32 by a duly authorized instructor, except that: (i) persons who are honor-  
33 ably discharged from the United States army, navy, marine corps or coast  
34 guard, or of the national guard of the state of New York, and produce  
35 evidence of official qualification in firearms during the term of  
36 service are not required to have completed those hours of a firearms  
37 safety course pertaining to the safe use, carrying, possession, mainte-  
38 nance and storage of a firearm; ~~and~~ (ii) persons who were licensed to  
39 possess a pistol or revolver prior to the effective date of this para-  
40 graph are not required to have completed a firearms safety course and  
41 test, provided, however, persons with a license issued under paragraph  
42 (f) of subdivision two of this section prior to the effective date of  
43 the laws of two thousand twenty-two which amended this paragraph shall  
44 be required to complete the training required by subdivision nineteen of  
45 this section prior to the recertification of such license; and (iii)  
46 persons applying for a license under paragraph (f) of subdivision two of  
47 this section on or after the effective date of the chapter of the laws  
48 of two thousand twenty-two which amended this paragraph who shall be  
49 required to complete the training required under subdivision nineteen of  
50 this section for such license; (m) who has not had a guardian appointed  
51 for him or her pursuant to any provision of state law, based on a deter-  
52 mination that as a result of marked subnormal intelligence, mental  
53 illness, incompetency, incapacity, condition or disease, he or she lacks  
54 the mental capacity to contract or manage his or her own affairs; ~~and~~  
55 ~~(n) concerning whom no good cause exists for the denial of the license.]~~  
56 (n) for a license issued under paragraph (f) of subdivision two of this

1 section, that the applicant has not been convicted within five years of  
2 the date of the application of any of the following: (i) assault in  
3 the third degree, as defined in section 120.00 of this chapter; (ii)  
4 misdemeanor driving while intoxicated, as defined in section eleven  
5 hundred ninety-two of the vehicle and traffic law; or (iii) menacing, as  
6 defined in section 120.15 of this chapter; and (o) for a license issued  
7 under paragraph (f) of subdivision two of this section, the applicant  
8 shall meet in person with the licensing officer for an interview and  
9 shall, in addition to any other information or forms required by the  
10 license application submit to the licensing officer the following infor-  
11 mation: (i) names and contact information for the applicant's  
12 current spouse, or domestic partner, any other adults residing in the  
13 applicant's home, including any adult children of the applicant, and  
14 whether or not there are minors residing, full time or part time, in the  
15 applicant's home; (ii) names and contact information of no less than  
16 four character references who can attest to the applicant's good  
17 moral character and that such applicant has not engaged in any acts, or  
18 made any statements that suggest they are likely to engage in conduct  
19 that would result in harm to themselves or others; (iii) certification  
20 of completion of the training required in subdivision nineteen of this  
21 section; (iv) a list of former and current social media accounts of  
22 the applicant from the past three years to confirm the information  
23 regarding the applicants character and conduct as required in subpara-  
24 graph (ii) of this paragraph; and (v) such other information required by  
25 the licensing officer that is reasonably necessary and related to the  
26 review of the licensing application.

27 1-a. No person shall engage in the business of gunsmith or dealer in  
28 firearms unless licensed pursuant to this section. An applicant to  
29 engage in such business shall also be a citizen of the United States,  
30 more than twenty-one years of age and shall be required to maintain a  
31 place of business in the city or county where the license is issued. For  
32 such business, if the applicant is a firm or partnership, each member  
33 thereof shall comply with all of the requirements set forth in this  
34 subdivision and if the applicant is a corporation, each officer thereof  
35 shall so comply.

36 [~~1-a.~~] 1-b. For purposes of subdivision one of this section, serious  
37 offense shall include an offense in any jurisdiction or the former penal  
38 law that includes all of the essential elements of a serious offense as  
39 defined by subdivision seventeen of section 265.00 of this chapter.  
40 Nothing in this subdivision shall preclude the denial of a license based  
41 on the commission of, arrest for or conviction of an offense in any  
42 other jurisdiction which does not include all of the essential elements  
43 of a serious offense.

44 2. Types of licenses. A license for gunsmith or dealer in firearms  
45 shall be issued to engage in such business. A license for a semiautomat-  
46 ic rifle, other than an assault weapon or disguised gun, shall be issued  
47 to purchase or take possession of such a [~~firearm~~] semiautomatic rifle  
48 when such transfer of ownership occurs on or after the effective date of  
49 [~~the~~] chapter two hundred twelve of the laws of two thousand twenty-two  
50 that amended this subdivision. A license for a pistol or revolver, other  
51 than an assault weapon or a disguised gun, shall be issued to (a) have  
52 and possess in his dwelling by a householder; (b) have and possess in  
53 his place of business by a merchant or storekeeper; (c) have and carry  
54 concealed while so employed by a messenger employed by a banking insti-  
55 tution or express company; (d) have and carry concealed by a justice of  
56 the supreme court in the first or second judicial departments, or by a

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1 judge of the New York city civil court or the New York city criminal  
2 court; (e) have and carry concealed while so employed by a regular  
3 employee of an institution of the state, or of any county, city, town or  
4 village, under control of a commissioner of correction of the city or  
5 any warden, superintendent or head keeper of any state prison, peniten-  
6 tiary, workhouse, county jail or other institution for the detention of  
7 persons convicted or accused of crime or held as witnesses in criminal  
8 cases, provided that application is made therefor by such commissioner,  
9 warden, superintendent or head keeper; (f) have and carry concealed,  
10 without regard to employment or place of possession subject to the  
11 restrictions of state and federal law, by any person [~~when proper cause~~  
12 ~~exists for the issuance thereof~~]; and (g) have, possess, collect and  
13 carry antique pistols which are defined as follows: (i) any single shot,  
14 muzzle loading pistol with a matchlock, flintlock, percussion cap, or  
15 similar type of ignition system manufactured in or before [~~1898~~] 1898,  
16 which is not designed for using rimfire or conventional centerfire fixed  
17 ammunition; and (ii) any replica of any pistol described in clause (i)  
18 hereof if such replica[—];

19 (1) is not designed or redesigned for using rimfire or conventional  
20 centerfire fixed ammunition, or

21 (2) uses rimfire or conventional centerfire fixed ammunition which is  
22 no longer manufactured in the United States and which is not readily  
23 available in the ordinary channels of commercial trade.

24 4. Investigation. Before a license is issued or renewed, there shall  
25 be an investigation of all statements required in the application by the  
26 duly constituted police authorities of the locality where such applica-  
27 tion is made, including but not limited to such records as may be acces-  
28 sible to the division of state police or division of criminal justice  
29 services pursuant to section 400.02 of this article. For that purpose,  
30 the records of the appropriate office of the department of mental  
31 hygiene concerning previous or present mental illness of the applicant  
32 shall be available for inspection by the investigating officer of the  
33 police authority. Where the applicant is domiciled in a foreign state,  
34 the investigation shall include inquiry of the foreign state for records  
35 concerning the previous or present mental illness of the applicant, and,  
36 to the extent necessary for inspection by the investigating officer, the  
37 applicant shall execute a waiver of confidentiality of such record in  
38 such form as may be required by the foreign state. In order to ascertain  
39 any previous criminal record, the investigating officer shall take the  
40 fingerprints and physical descriptive data in quadruplicate of each  
41 individual by whom the application is signed and verified. Two copies of  
42 such fingerprints shall be taken on standard fingerprint cards eight  
43 inches square, and one copy may be taken on a card supplied for that  
44 purpose by the federal bureau of investigation; provided, however, that  
45 in the case of a corporate applicant that has already been issued a  
46 dealer in firearms license and seeks to operate a firearm dealership at  
47 a second or subsequent location, the original fingerprints on file may  
48 be used to ascertain any criminal record in the second or subsequent  
49 application unless any of the corporate officers have changed since the  
50 prior application, in which case the new corporate officer shall comply  
51 with procedures governing an initial application for such license. When  
52 completed, one standard card shall be forwarded to and retained by the  
53 division of criminal justice services in the executive department, at  
54 Albany. A search of the files of such division and written notification  
55 of the results of the search shall be forwarded to the investigating  
56 officer and shall be made without unnecessary delay. Thereafter, such

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1 division shall notify the licensing officer and the executive depart-  
2 ment, division of state police, Albany, of any criminal record of the  
3 applicant filed therein subsequent to the search of its files. A second  
4 standard card, or the one supplied by the federal bureau of investi-  
5 gation, as the case may be, shall be forwarded to that bureau at Wash-  
6 ington with a request that the files of the bureau be searched and  
7 notification of the results of the search be made to the investigating  
8 police authority. Of the remaining two fingerprint cards, one shall be  
9 filed with the executive department, division of state police, Albany,  
10 within ten days after issuance of the license, and the other shall  
11 remain on file with the investigating police authority. No such finger-  
12 prints may be inspected by any person other than a peace officer, who is  
13 acting pursuant to his or her special duties, or a police officer,  
14 except on order of a judge or justice of a court of record either upon  
15 notice to the licensee or without notice, as the judge or justice may  
16 deem appropriate. Upon completion of the investigation, the police  
17 authority shall report the results to the licensing officer without  
18 unnecessary delay.

19 4-a. Appeals from denial of an application, renewal, recertification  
20 or license revocation. If an application for a license is denied, not  
21 renewed, not recertified, or revoked, the licensing officer shall issue  
22 a written notice to the applicant setting forth the reasons for such  
23 denial. An applicant may, within ninety days of receipt of such notice,  
24 request a hearing to appeal the denial to the appeals board created by  
25 the division of criminal justice services and the superintendent of  
26 state police. An individual may be represented by counsel at any appear-  
27 ance before the appeals board and shall be afforded an opportunity to  
28 present additional evidence in support of their application. The  
29 commissioner of criminal justice services and the superintendent of  
30 state police shall promulgate rules and regulations governing such  
31 appeals process.

32 4-b. Processing of license applications. Applications for licenses  
33 shall be accepted for processing by the licensing officer at the time of  
34 presentment. Except upon written notice to the applicant specifically  
35 stating the reasons for any delay, in each case the licensing officer  
36 shall act upon any application for a license pursuant to this section  
37 within six months of the date of presentment of such an application to  
38 the appropriate authority. Such delay may only be for good cause and  
39 with respect to the applicant. In acting upon an application, the  
40 licensing officer shall either deny the application for reasons specif-  
41 ically and concisely stated in writing or grant the application and  
42 issue the license applied for.

43 [~~4-b.~~] 4-c. Westchester county firearms safety course certificate. In  
44 the county of Westchester, at the time of application, the licensing  
45 officer to which the license application is made shall provide a copy of  
46 the safety course booklet to each license applicant. Before such license  
47 is issued, such licensing officer shall require that the applicant  
48 submit a certificate of successful completion of a firearms safety  
49 course and test issued in his or her name and endorsed and affirmed  
50 under the penalties of perjury by a duly authorized instructor.

51 10. License: expiration, certification and renewal. (a) Any license  
52 for gunsmith or dealer in firearms and, in the city of New York, any  
53 license to carry or possess a pistol or revolver, issued at any time  
54 pursuant to this section or prior to the first day of July, nineteen  
55 hundred sixty-three and not limited to expire on an earlier date fixed  
56 in the license, shall, except as otherwise provided in paragraph (d) of



1 this subdivision, expire not more than three years after the date of  
2 issuance. In the counties of Nassau, Suffolk and Westchester, any  
3 license to carry or possess a pistol or revolver, issued at any time  
4 pursuant to this section or prior to the first day of July, nineteen  
5 hundred sixty-three and not limited to expire on an earlier date fixed  
6 in the license, shall expire not more than five years after the date of  
7 issuance; however, in the county of Westchester, any such license shall  
8 be certified prior to the first day of April, two thousand, in accord-  
9 ance with a schedule to be contained in regulations promulgated by the  
10 commissioner of the division of criminal justice services, and every  
11 such license shall, except as otherwise provided in paragraph (d) of  
12 this subdivision, be recertified every five years thereafter. For  
13 purposes of this section certification shall mean that the licensee  
14 shall provide to the licensing officer the following information only:  
15 current name, date of birth, current address, and the make, model, cali-  
16 ber and serial number of all firearms currently possessed. Such certif-  
17 ication information shall be filed by the licensing officer in the same  
18 manner as an amendment. Elsewhere than in the city of New York and the  
19 counties of Nassau, Suffolk and Westchester, any license to carry or  
20 possess a pistol or revolver, issued at any time pursuant to this  
21 section or prior to the first day of July, nineteen hundred sixty-three  
22 and not previously revoked or cancelled, shall be in force and effect  
23 until revoked as herein provided. Any license not previously cancelled  
24 or revoked shall remain in full force and effect for thirty days beyond  
25 the stated expiration date on such license. Any application to renew a  
26 license that has not previously expired, been revoked or cancelled shall  
27 thereby extend the term of the license until disposition of the applica-  
28 tion by the licensing officer. In the case of a license for gunsmith or  
29 dealer in firearms, in counties having a population of less than two  
30 hundred thousand inhabitants, photographs and fingerprints shall be  
31 submitted on original applications and upon renewal thereafter [~~only~~]  
32 [~~six~~] three year intervals. Upon satisfactory proof that a currently  
33 valid original license has been despoiled, lost or otherwise removed  
34 from the possession of the licensee and upon application containing an  
35 additional photograph of the licensee, the licensing officer shall issue  
36 a duplicate license.

37 (b) All licensees shall be recertified to the division of state police  
38 every five years thereafter, except as otherwise provided in paragraph  
39 (d) of this subdivision. Any license issued before the effective date of  
40 the chapter of the laws of two thousand thirteen which added this para-  
41 graph shall be recertified by the licensee on or before January thirty-  
42 first, two thousand eighteen, and not less than one year prior to such  
43 date, the state police shall send a notice to all license holders who  
44 have not recertified by such time. Such recertification shall be in a  
45 form as approved by the superintendent of state police, which shall  
46 request the license holder's name, date of birth, gender, race, residen-  
47 tial address, social security number, firearms possessed by such license  
48 holder, email address at the option of the license holder and an affir-  
49 mation that such license holder is not prohibited from possessing  
50 firearms. The form may be in an electronic form if so designated by the  
51 superintendent of state police. Failure to recertify shall act as a  
52 revocation of such license. If the New York state police discover as a  
53 result of the recertification process that a licensee failed to provide  
54 a change of address, the New York state police shall not require the  
55 licensing officer to revoke such license.

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1 (c) A license to purchase or take possession of a semiautomatic rifle  
2 as defined in subdivision two of this section shall be recertified to  
3 the applicable licensing officer every five years following the issuance  
4 of such license. Failure to renew such a license shall be a violation  
5 punishable by a fine not to exceed two hundred fifty dollars, and such  
6 failure to renew shall be considered by the licensing officer when  
7 reviewing future license applications by the license holder pursuant to  
8 this chapter.

9 (d) Licenses issued under paragraph (f) of subdivision two of this  
10 section shall be recertified or renewed in the same form and manner as  
11 otherwise required by this subdivision, provided however, that such  
12 licenses shall be recertified or renewed every three years following the  
13 issuance of such license. For licenses issued prior to the effective  
14 date of this paragraph that were issued more than three years prior to  
15 such date, or will expire in less than one year from such date shall be  
16 recertified or renewed within one year of such date.

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

45 (b) Whenever the director of community services or his or her designee  
46 makes a report pursuant to section 9.46 of the mental hygiene law, the  
47 division of criminal justice services shall convey such information,  
48 whenever it determines that the person named in the report possesses a  
49 license issued pursuant to this section, to the appropriate licensing  
50 official, who shall issue an order suspending or revoking such license.

51 (c) In any instance in which a person's license is suspended or  
52 revoked under paragraph (a) or (b) of this subdivision, such person  
53 shall surrender such license to the appropriate licensing official and  
54 any and all firearms, rifles, or shotguns owned or possessed by such  
55 person shall be surrendered to an appropriate law enforcement agency as  
56 provided in subparagraph (f) of paragraph one of subdivision a of

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1 section 265.20 of this chapter. In the event such license, firearm,  
2 shotgun, or rifle is not surrendered, such items shall be removed and  
3 declared a nuisance and any police officer or peace officer acting  
4 pursuant to his or her special duties is authorized to remove any and  
5 all such weapons.

6 § 2. Section 837 of the executive law is amended by adding a new  
7 subdivision 23 to read as follows:

8 23. (a) In conjunction with the superintendent of the state police,  
9 promulgate policies and procedures with regard to standardization of  
10 firearms safety training required under subdivision nineteen of section  
11 400.00 of the penal law, which shall include the approval of course  
12 materials and promulgation of proficiency standards for live fire train-  
13 ing; and

14 (b) In conjunction with the superintendent of state police, create an  
15 appeals board for the purpose of hearing appeals as provided in subdivi-  
16 sion four-a of section 400.00 of the penal law and promulgate rules and  
17 regulations governing such appeals.

18 § 3. The executive law is amended by adding a new section 235 to read  
19 as follows:

20 § 235. Firearms safety training, and licensing appeals. 1. The super-  
21 intendent shall, in conjunction with the commissioner of the division of  
22 criminal justice services, promulgate policies and procedures with  
23 regard to standardization of firearms safety training required under  
24 subdivision nineteen of section 400.00 of the penal law, which shall  
25 include the approval of course materials and the promulgation of profi-  
26 ciency standards for live fire training.

27 2. The superintendent, in conjunction with the commissioner of the  
28 division of criminal justice services, shall create an appeals board for  
29 the purpose of hearing appeals as provided in subdivision four-a of  
30 section 400.00 of the penal law and promulgate rules and regulations  
31 governing such appeals.

32 § 4. The penal law is amended by adding a new section 265.01-e to read  
33 as follows:

34 § 265.01-e Criminal possession of a firearm, rifle or shotgun in a  
35 sensitive location.

36 1. A person is guilty of criminal possession of a firearm, rifle or  
37 shotgun in a sensitive location when such person possesses a firearm,  
38 rifle or shotgun in or upon a sensitive location, and such person knows  
39 or reasonably should know such location is a sensitive location.

40 2. For the purposes of this section, a sensitive location shall mean:

41 (a) any place owned or under the control of federal, state or local  
42 government, for the purpose of government administration, including  
43 courts;

44 (b) any location providing health, behavioral health, or chemical  
45 dependance care or services;

46 (c) any place of worship or religious observation;

47 (d) libraries, public playgrounds, public parks, and zoos;

48 (e) the location of any program licensed, regulated, certified, fund-  
49 ed, or approved by the office of children and family services that  
50 provides services to children, youth, or young adults, any legally  
51 exempt childcare provider; a childcare program for which a permit to  
52 operate such program has been issued by the department of health and  
53 mental hygiene pursuant to the health code of the city of New York;

54 (f) nursery schools, preschools, and summer camps;



1 (g) the location of any program licensed, regulated, certified, oper-  
2 ated, or funded by the office for people with developmental disabili-  
3 ties;

4 (h) the location of any program licensed, regulated, certified, oper-  
5 ated, or funded by office of addiction services and supports;

6 (i) the location of any program licensed, regulated, certified, oper-  
7 ated, or funded by the office of mental health;

8 (j) the location of any program licensed, regulated, certified, oper-  
9 ated, or funded by the office of temporary and disability assistance;

10 (k) homeless shelters, runaway homeless youth shelters, family shel-  
11 ters, shelters for adults, domestic violence shelters, and emergency  
12 shelters, and residential programs for victims of domestic violence;

13 (l) residential settings licensed, certified, regulated, funded, or  
14 operated by the department of health;

15 (m) in or upon any building or grounds, owned or leased, of any educa-  
16 tional institutions, colleges and universities, licensed private career  
17 schools, school districts, public schools, private schools licensed  
18 under article one hundred one of the education law, charter schools,  
19 non-public schools, board of cooperative educational services, special  
20 act schools, preschool special education programs, private residential  
21 or non-residential schools for the education of students with disabili-  
22 ties, and any state-operated or state-supported schools;

23 (n) any place, conveyance, or vehicle used for public transportation  
24 or public transit, subway cars, train cars, buses, ferries, railroad,  
25 omnibus, marine or aviation transportation; or any facility used for or  
26 in connection with service in the transportation of passengers,  
27 airports, train stations, subway and rail stations, and bus terminals;

28 (o) any establishment issued a license for on-premise consumption  
29 pursuant to article four, four-A, five, or six of the alcoholic beverage  
30 control law where alcohol is consumed and any establishment licensed  
31 under article four of the cannabis law for on-premise consumption;

32 (p) any place used for the performance, art entertainment, gaming, or  
33 sporting events such as theaters, stadiums, racetracks, museums, amuse-  
34 ment parks, performance venues, concerts, exhibits, conference centers,  
35 banquet halls, and gaming facilities and video lottery terminal facili-  
36 ties as licensed by the gaming commission;

37 (q) any location being used as a polling place;

38 (r) any public sidewalk or other public area restricted from general  
39 public access for a limited time or special event that has been issued a  
40 permit for such time or event by a governmental entity, or subject to  
41 specific, heightened law enforcement protection, or has otherwise had  
42 such access restricted by a governmental entity, provided such location  
43 is identified as such by clear and conspicuous signage;

44 (s) any gathering of individuals to collectively express their consti-  
45 tutional rights to protest or assemble;

46 (t) the area commonly known as Times Square, as such area is deter-  
47 mined and identified by the city of New York; provided such area shall  
48 be clearly and conspicuously identified with signage.

49 3. This section shall not apply to:

50 (a) consistent with federal law, law enforcement who qualify to carry  
51 under the federal law enforcement officers safety act, 18 U.S.C. 926C;

52 (b) persons who are police officers as defined in subdivision thirty-  
53 four of section 1.20 of the criminal procedure law;

54 (c) persons who are designated peace officers by section 2.10 of the  
55 criminal procedure law;

1 (d) persons who were employed as police officers as defined in subdivi-  
2 vision thirty-four of section 1.20 of the criminal procedure law but are  
3 retired;

4 (e) security guards as defined by and registered under article seven-A  
5 of the general business law, who have been granted a special armed  
6 registration card, while at the location of their employment and during  
7 their work hours as such a security guard;

8 (f) active-duty military personnel;

9 (g) persons licensed under paragraph (c), (d) or (e) of subdivision  
10 two of section 400.00 of this chapter while in the course of his or her  
11 official duties;

12 (h) a government employee under the express written consent of such  
13 employee's supervising government entity for the purposes of natural  
14 resource protection and management;

15 (i) persons lawfully engaged in hunting activity, including hunter  
16 education training; or

17 (j) persons operating a program in a sensitive location out of their  
18 residence, as defined by this section, which is licensed, certified,  
19 authorized, or funded by the state or a municipality, so long as such  
20 possession is in compliance with any rules or regulations applicable to  
21 the operation of such program and use or storage of firearms.

22 Criminal possession of a firearm, rifle or shotgun in a sensitive  
23 location is a class E felony.

24 § 5. The penal law is amended by adding a new section 265.01-d to read  
25 as follows:

26 § 265.01-d Criminal possession of a weapon in a restricted location.

27 1. A person is guilty of criminal possession of a weapon in a  
28 restricted location when such person possesses a firearm, rifle, or  
29 shotgun and enters into or remains on or in private property where such  
30 person knows or reasonably should know that the owner or lessee of such  
31 property has not permitted such possession by clear and conspicuous  
32 signage indicating that the carrying of firearms, rifles, or shotguns on  
33 their property is permitted or has otherwise given express consent.

34 2. This section shall not apply to:

35 (a) police officers as defined in section 1.20 of the criminal proce-  
36 dure law;

37 (b) persons who are designated peace officers as defined in section  
38 2.10 of the criminal procedure law;

39 (c) persons who were employed as police officers as defined in section  
40 1.20 of the criminal procedure law, but are retired;

41 (d) security guards as defined by and registered under article seven-A  
42 of the general business law who has been granted a special armed regis-  
43 tration card, while at the location of their employment and during their  
44 work hours as such a security guard;

45 (e) active-duty military personnel;

46 (f) persons licensed under paragraph (c), (d) or (e) of subdivision  
47 two of section 400.00 of this chapter while in the course of his or her  
48 official duties; or

49 (g) persons lawfully engaged in hunting activity.

50 Criminal possession of a weapon in a restricted location is a class E  
51 felony.

52 § 6. Subdivision a of section 265.20 of the penal law is amended by  
53 adding a new paragraph 3-a to read as follows:

54 3-a. Possession of a pistol or revolver by a person undergoing live-  
55 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.

3 § 7. Section 400.02 of the penal law, as amended by chapter 244 of the  
4 laws of 2019, is amended to read as follows:

5 § 400.02 Statewide license and record database.

6 1. There shall be a statewide license and record database which shall  
7 be created and maintained by the division of state police the cost of  
8 which shall not be borne by any municipality. Records assembled or  
9 collected for purposes of inclusion in such database shall not be  
10 subject to disclosure pursuant to article six of the public officers  
11 law. [~~Records~~] All records containing granted license applications from  
12 all licensing authorities shall be [~~periodically~~] monthly checked by the  
13 division of criminal justice services in conjunction with the division  
14 of state police against criminal conviction, criminal indictment, mental  
15 health, extreme risk protection orders, orders of protection, and all  
16 other records as are necessary to determine their continued accuracy as  
17 well as whether an individual is no longer a valid license holder. The  
18 division of criminal justice services shall also check pending applica-  
19 tions made pursuant to this article against such records to determine  
20 whether a license may be granted. All state and local agencies shall  
21 cooperate with the division of criminal justice services, as otherwise  
22 authorized by law, in making their records available for such checks.  
23 The division of criminal justice services, upon determining that an  
24 individual is ineligible to possess a license, or is no longer a valid  
25 license holder, shall notify the applicable licensing official of such  
26 determination and such licensing official shall not issue a license or  
27 shall revoke such license and any weapons owned or possessed by such  
28 individual shall be removed consistent with the provisions of subdivi-  
29 sion eleven of section 400.00 of this article. Local and state law  
30 enforcement shall have access to such database in the performance of  
31 their duties. Records assembled or collected for purposes of inclusion  
32 in the database established by this section shall be released pursuant  
33 to a court order.

34 2. There shall be a statewide license and record database specific for  
35 ammunition sales which shall be created and maintained by the division  
36 of state police the cost of which shall not be borne by any municipality  
37 no later than thirty days upon designating the division of state police  
38 as the point of contact to perform both firearm and ammunition back-  
39 ground checks under federal and state law. Records assembled or  
40 collected for purposes of inclusion in such database shall not be  
41 subject to disclosure pursuant to article six of the public officers  
42 law. All records containing granted license applications from all  
43 licensing authorities shall be monthly checked by the division of crimi-  
44 nal justice services in conjunction with the division of state police  
45 against criminal conviction, criminal indictments, mental health,  
46 extreme risk protection orders, orders of protection, and all other  
47 records as are necessary to determine their continued accuracy as well  
48 as whether an individual is no longer a valid license holder. The divi-  
49 sion of criminal justice services shall also check pending applications  
50 made pursuant to this article against such records to determine whether  
51 a license may be granted. All state and local agencies shall cooperate  
52 with the division of criminal justice services, as otherwise authorized  
53 by law, in making their records available for such checks. No later than  
54 thirty days after the superintendent of the state police certifies that  
55 the statewide license and record database established pursuant to this  
56 section and the statewide license and record database established for

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1 ammunition sales are operational for the purposes of this section, a  
2 dealer in firearms licensed pursuant to section 400.00 of this article,  
3 a seller of ammunition as defined in subdivision twenty-four of section  
4 265.00 of this chapter shall not transfer any ammunition to any other  
5 person who is not a dealer in firearms as defined in subdivision nine of  
6 such section 265.00 or a seller of ammunition as defined in subdivision  
7 twenty-four of section 265.00 of this chapter, unless:

8 (a) before the completion of the transfer, the licensee or seller  
9 contacts the statewide license and record database and provides the  
10 database with information sufficient to identify such dealer or seller  
11 transferee based on information on the transferee's identification docu-  
12 ment as defined in paragraph (c) of this subdivision, as well as the  
13 amount, caliber, manufacturer's name and serial number, if any, of such  
14 ammunition;

15 (b) the licensee or seller is provided with a unique identification  
16 number; and

17 (c) the transferor has verified the identity of the transferee by  
18 examining a valid state identification document of the transferee issued  
19 by the department of motor vehicles or if the transferee is not a resi-  
20 dent of the state of New York, a valid identification document issued by  
21 the transferee's state or country of residence containing a photograph  
22 of the transferee.

23 § 8. Subdivisions 2 and 6 of section 400.03 of the penal law, as added  
24 by chapter 1 of the laws of 2013, are amended to read as follows:

25 2. Any seller of ammunition or dealer in firearms shall keep [~~a record~~  
26 ~~book~~] either an electronic record, or dataset, or an organized  
27 collection of structured information, or data, typically stored elec-  
28 tronically in a computer system approved as to form by the superinten-  
29 dent of state police. In the record [~~book~~] shall be entered at the time  
30 of every transaction involving ammunition the date, name, age, occupa-  
31 tion and residence of any person from whom ammunition is received or to  
32 whom ammunition is delivered, and the amount, calibre, manufacturer's  
33 name and serial number, or if none, any other distinguishing number or  
34 identification mark on such ammunition. [~~The record book shall be main-~~  
35 ~~tained on the premises mentioned and described in the license and shall~~  
36 ~~be open at all reasonable hours for inspection by any peace officer,~~  
37 ~~acting pursuant to his or her special duties, or police officer. Any~~  
38 ~~record produced pursuant to this section and any transmission thereof to~~  
39 ~~any government agency shall not be considered a public record for~~  
40 ~~purposes of article six of the public officers law.]~~

41 6. If the superintendent of state police certifies that background  
42 checks of ammunition purchasers may be conducted through the national  
43 instant criminal background check system or through the division of  
44 state police once the division has been designated point of contact, use  
45 of that system by a dealer or seller shall be sufficient to satisfy  
46 subdivisions four and five of this section and such checks shall be  
47 conducted through such system, provided that a record of such trans-  
48 action shall be forwarded to the state police in a form determined by  
49 the superintendent.

50 § 9. Section 265.45 of the penal law, as amended by chapter 133 of the  
51 laws of 2019, is amended to read as follows:

52 § 265.45 Failure to safely store rifles, shotguns, and firearms in the  
53 first degree.

54 1. No person who owns or is custodian of a rifle, shotgun or firearm  
55 who resides with an individual who: (i) is under [~~sixteen~~] eighteen  
56 years of age; (ii) such person knows or has reason to know is prohibited

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1 from possessing a rifle, shotgun or firearm pursuant to a temporary or  
 2 final extreme risk protection order issued under article sixty-three-A  
 3 of the civil practice law and rules or 18 U.S.C. § 922(g) (1), (4), (8)  
 4 or (9); or (iii) such person knows or has reason to know is prohibited  
 5 from possessing a rifle, shotgun or firearm based on a conviction for a  
 6 felony or a serious offense, shall store or otherwise leave such rifle,  
 7 shotgun or firearm out of his or her immediate possession or control  
 8 without having first securely locked such rifle, shotgun or firearm in  
 9 an appropriate safe storage depository or rendered it incapable of being  
 10 fired by use of a gun locking device appropriate to that weapon.

11 2. No person shall store or otherwise leave a rifle, shotgun, or  
 12 firearm out of his or her immediate possession or control inside a vehi-  
 13 cle without first removing the ammunition from and securely locking such  
 14 rifle, shotgun, or firearm in an appropriate safe storage depository out  
 15 of sight from outside of the vehicle.

16 3. For purposes of this section "safe storage depository" shall mean a  
 17 safe or other secure container which, when locked, is incapable of being  
 18 opened without the key, keypad, combination or other unlocking mechanism  
 19 and is capable of preventing an unauthorized person from obtaining  
 20 access to and possession of the weapon contained therein and shall be  
 21 fire, impact, and tamper resistant. Nothing in this section shall be  
 22 deemed to affect, impair or supersede any special or local act relating  
 23 to the safe storage of rifles, shotguns or firearms which impose addi-  
 24 tional requirements on the owner or custodian of such weapons. For the  
 25 purposes of subdivision two of this section, a glove compartment or  
 26 glove box shall not be considered an appropriate safe storage deposito-  
 27 ry.

28 4. It shall not be a violation of this section to allow a person less  
 29 than [~~sixteen~~ eighteen] years of age access to: (i) a firearm, rifle or  
 30 shotgun for lawful use as authorized under paragraph seven or seven-e of  
 31 subdivision a of section 265.20 of this article, or (ii) a rifle or  
 32 shotgun for lawful use as authorized by article eleven of the environ-  
 33 mental conservation law when such person less than [~~sixteen~~ eighteen]  
 34 years of age is the holder of a hunting license or permit and such rifle  
 35 or shotgun is used in accordance with such law.

36 Failure to safely store rifles, shotguns, and firearms in the first  
 37 degree is a class A misdemeanor.

38 § 10. The penal law is amended by adding a new section 400.30 to read  
 39 as follows:

40 § 400.30 Application.

41 Nothing in this article shall be construed to impair or in any way  
 42 prevent the enactment or application of any local law, code, ordinance,  
 43 rule or regulation that is more restrictive than any requirement set  
 44 forth in or established by this article.

45 § 11. Section 270.20 of the penal law, as added by chapter 56 of the  
 46 laws of 1984, and subdivision 1 as amended by chapter 317 of the laws of  
 47 2001, is amended to read as follows:

48 § 270.20 Unlawful wearing of [a] body [~~vest~~ armor].

49 1. A person is guilty of the unlawful wearing of [a] body [~~vest~~ armor]  
 50 when acting either alone or with one or more other persons he commits  
 51 any violent felony offense defined in section 70.02 while possessing a  
 52 firearm, rifle or shotgun and in the course of and in furtherance of  
 53 such crime he or she wears [a] body [~~vest~~ armor].

54 2. For the purposes of this section [a] "body [~~vest~~ armor]" means [~~a~~]  
 55 ~~bullet resistant soft body armor providing, as a minimum standard, the~~  
 56 ~~level of protection known as threat level I which shall mean at least~~



~~seven layers of bullet resistant material providing protection from three shots of one hundred fifty eight grain lead ammunition fired from a .38 calibre handgun at a velocity of eight hundred fifty feet per second~~ any product that is a personal protective body covering intended to protect against gunfire, regardless of whether such product is to be worn alone or is sold as a complement to another product or garment.

The unlawful wearing of [a] body ~~vest~~ armor is a class E felony.

§ 12. Section 270.21 of the penal law, as added by chapter 210 of the laws of 2022, is amended to read as follows:

§ 270.21 Unlawful purchase of [a] body ~~vest~~ armor.

A person is guilty of the unlawful purchase of [a] body ~~vest~~ armor when, not being engaged or employed in an eligible profession, they knowingly purchase or take possession of [a] body ~~vest~~ armor, as such term is defined in subdivision two of section 270.20 of this article. This section shall not apply to individuals or entities engaged or employed in eligible professions, which shall include police officers as defined in section 1.20 of the criminal procedure law, peace officers as defined in section 2.10 of the criminal procedure law, persons in military service in the state of New York or military or other service for the United States, and such other professions designated by the department of state in accordance with section one hundred forty-four-a of the executive law.

Unlawful purchase of [a] body ~~vest~~ armor is a class A misdemeanor for a first offense and a class E felony for any subsequent offense.

§ 13. Section 270.22 of the penal law, as added by chapter 210 of the laws of 2022, is amended to read as follows:

§ 270.22 Unlawful sale of [a] body ~~vest~~ armor.

A person is guilty of the unlawful sale of [a] body ~~vest~~ armor when they sell, exchange, give or dispose of [a] body ~~vest~~ armor, as such term is defined in subdivision two of section 270.20 of this article, to an individual whom they know or reasonably should have known is not engaged or employed in an eligible profession, as such term is defined in section 270.21 of this article.

Unlawful sale of [a] body ~~vest~~ armor is a class A misdemeanor for the first offense and a class E felony for any subsequent offense.

§ 14. Section 396-eee of the general business law, as added by chapter 210 of the laws of 2022, is amended to read as follows:

§ 396-eee. Unlawful sale or delivery of body ~~vests~~ armor. 1. No person, firm or corporation shall sell or deliver body ~~vests~~ armor to any individual or entity not engaged or employed in an eligible profession, and except as provided in subdivision ~~three~~ two of this section, no such sale or delivery shall be permitted unless the transferee meets in person with the transferor to accomplish such sale or delivery.

2. The provisions of subdivision one of this section regarding in person sale or delivery shall not apply to purchases made by federal, state, or local government agencies for the purpose of furnishing such body ~~vests~~ armor to employees in eligible professions.

3. For the purposes of this section, "body ~~vest~~ armor" shall have the same meaning as defined in subdivision two of section 270.20 of the penal law.

4. Any person, firm or corporation that violate the provisions of this section shall be guilty of a violation punishable by a fine in an amount not to exceed five thousand dollars for the first offense and in an amount not to exceed ten thousand dollars for any subsequent offense.

§ 15. Section 144-a of the executive law, as added by chapter 210 of the laws of 2022, is amended to read as follows:

1 § 144-a. Eligible professions for the purchase, sale, and use of body  
2 [~~vests~~] armor. The secretary of state in consultation with the division  
3 of criminal justice services, the division of homeland security and  
4 emergency services, the department of corrections and community super-  
5 vision, the division of the state police, and the office of general  
6 services shall promulgate rules and regulations to establish criteria  
7 for eligible professions requiring the use of [a] body [~~vest~~] armor, as  
8 such term is defined in subdivision two of section 270.20 of the penal  
9 law. Such professions shall include those in which the duties may expose  
10 the individual to serious physical injury that may be prevented or miti-  
11 gated by the wearing of [a] body [~~vest~~] armor. Such rules and regu-  
12 lations shall also include a process by which an individual or entity  
13 may request that the profession in which they engage be added to the  
14 list of eligible professions, a process by which the department shall  
15 approve such professions, and a process by which individuals and enti-  
16 ties may present proof of engagement in eligible professions when  
17 purchasing [a] body [~~vest~~] armor.

18 § 16. The executive law is amended by adding a new section 228 to read  
19 as follows:

20 § 228. National instant criminal background checks. 1. (a) The divi-  
21 sion is hereby authorized and directed to serve as a state point of  
22 contact for implementation of 18 U.S.C. sec. 922 (t), all federal regu-  
23 lations and applicable guidelines adopted pursuant thereto, and the  
24 national instant criminal background check system for the purchase of  
25 firearms and ammunition.

26 (b) Upon receiving a request from a licensed dealer pursuant to  
27 section eight hundred ninety-six or eight hundred ninety-eight of the  
28 general business law, the division shall initiate a background check by  
29 (i) contacting the National Instant Criminal Background Check System  
30 (NICS) or its successor to initiate a national instant criminal back-  
31 ground check, and (ii) consulting the statewide firearms license and  
32 records database established pursuant to subdivision three of this  
33 section, in order to determine if the purchaser is a person described in  
34 sections 400.00 and 400.03 of the penal law, or is prohibited by state  
35 or federal law from possessing, receiving, owning, or purchasing a  
36 firearm or ammunition.

37 2. (a) The division shall report the name, date of birth and physical  
38 description of any person prohibited from possessing a firearm pursuant  
39 to 18 U.S.C. sec. 922(g) or (n) to the national instant criminal back-  
40 ground check system index, denied persons files.

41 (b) Information provided pursuant to this section shall remain privi-  
42 leged and confidential, and shall not be disclosed, except for the  
43 purpose of enforcing federal or state law regarding the purchase of  
44 firearms or ammunition.

45 (c) Any background check conducted by the division, or delegated  
46 authority, of any applicant for a permit, firearms identification card  
47 license, ammunition sale, or registration, in accordance with the  
48 requirements of section 400.00 of the penal law, shall not be considered  
49 a public record and shall not be disclosed to any person not authorized  
50 by law or this chapter to have access to such background check, includ-  
51 ing the applicant. Any application for a permit, firearms identification  
52 card, ammunition sale, or license, and any document reflecting the issu-  
53 ance or denial of such permit, firearms identification card, or license,  
54 and any permit, firearms identification card, license, certification,  
55 certificate, form of register, or registration statement, maintained by  
56 any state or municipal governmental agency, shall not be considered a

1 public record and shall not be disclosed to any person not authorized by  
2 law to have access to such documentation, including the applicant,  
3 except on the request of persons acting in their governmental capacities  
4 for purposes of the administration of justice.

5 3. The division shall create and maintain a statewide firearms license  
6 and records database which shall contain records held by the division  
7 and any records that it is authorized to request from the division of  
8 criminal justice services, office of court administration, New York  
9 state department of health, New York state office of mental health, and  
10 other local entities. Such database shall be used for the certification  
11 and recertification of firearm permits under section 400.02 of the penal  
12 law, assault weapon registration under subdivision sixteen-a of section  
13 400.00 of the penal law, and ammunition sales under section 400.03 of  
14 the penal law. Such database shall also be used to initiate a national  
15 instant criminal background check pursuant to subdivision one of this  
16 section upon request from a licensed dealer. The division may create and  
17 maintain additional databases as needed to complete background checks  
18 pursuant to the requirements of this section.

19 4. The superintendent shall promulgate a plan to coordinate background  
20 checks for firearm and ammunition purchases pursuant to this section and  
21 to require any person, firm or corporation that sells, delivers or  
22 otherwise transfers any firearm or ammunition to submit a request to the  
23 division in order to complete the background checks in compliance with  
24 federal and state law, including the National Instant Criminal Back-  
25 ground Check System (NICS), in New York state. Such plan shall include,  
26 but shall not be limited to, the following features:

27 (a) The creation of a centralized bureau within the division to  
28 receive and process all background check requests, which shall include a  
29 contact center unit and an appeals unit. Staff may include but is not  
30 limited to: bureau chief, supervisors, managers, different levels of  
31 administrative analysts, appeals specialists and administrative person-  
32 nel. The division shall employ and train such personnel to administer  
33 the provisions of this section.

34 (b) Procedures for carrying out the duties under this section, includ-  
35 ing hours of operation.

36 (c) An automated phone system and web-based application system,  
37 including a toll-free telephone number and/or web-based application  
38 option for any licensed dealer requesting a background check in order to  
39 sell, deliver or otherwise transfer a firearm which shall be operational  
40 every day that the bureau is open for business for the purpose of  
41 responding to requests in accordance with this section.

42 5. (a) Each licensed dealer that submits a request for a national  
43 instant criminal background check pursuant to this section shall pay a  
44 fee imposed by the bureau for performing such background check. Such fee  
45 shall be allocated to the background check fund established pursuant to  
46 section ninety-nine-pp of the state finance law. The amount of the fee  
47 shall not exceed the total amount of direct and indirect costs incurred  
48 by the bureau in performing such background check.

49 (b) The bureau shall transmit all moneys collected pursuant to this  
50 paragraph to the state comptroller, who shall credit the same to the  
51 background check fund.

52 6. On January fifteenth of each calendar year, the bureau shall submit  
53 a report to the governor, the temporary president of the senate, and the  
54 speaker of the assembly concerning:



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1 a. the number of employees used by the bureau in the preceding year  
2 for the purpose of performing background checks pursuant to this  
3 section;

4 b. the number of background check requests received and processed  
5 during the preceding calendar year, including the number of "proceed"  
6 responses and the number and reasons for denials;

7 c. the calculations used to determine the amount of the fee imposed  
8 pursuant to this paragraph.

9 7. Within sixty days of the effective date of this section, the super-  
10 intendent shall notify each licensed dealer holding a permit to sell  
11 firearms of the requirement to submit a request to the division to  
12 initiate a background check pursuant to this section as well as the  
13 following means to be used to apply for background checks:

14 i. any person, firm or corporation that sells, delivers or otherwise  
15 transfers firearms shall obtain a completed ATF 4473 form from the  
16 potential buyer or transferee including name, date of birth, gender,  
17 race, social security number, or other identification numbers of such  
18 potential buyer or transferee and shall have inspected proper identifi-  
19 cation including an identification containing a photograph of the poten-  
20 tial buyer or transferee.

21 ii. it shall be unlawful for any person, in connection with the sale,  
22 acquisition or attempted acquisition of a firearm from any transferor,  
23 to willfully make any false, fictitious oral or written statement or to  
24 furnish or exhibit any false, fictitious, or misrepresented identifica-  
25 tion that is intended or likely to deceive such transferor with respect  
26 to any fact material to the lawfulness of the sale or other disposition  
27 of such firearm under federal or state law. Any person who violates the  
28 provisions of this subparagraph shall be guilty of a class A misdemea-  
29 nor.

30 8. Any potential buyer or transferee shall have thirty days to appeal  
31 the denial of a background check, using a form established by the super-  
32 intendent. Upon receipt of an appeal, the division shall provide such  
33 applicant a reason for a denial within thirty days. Upon receipt of the  
34 reason for denial, the appellant may appeal to the attorney general.

35 § 17. Subdivision 2 of section 898 of the general business law, as  
36 added by chapter 129 of the laws of 2019, is amended to read as follows:

37 2. Before any sale, exchange or disposal pursuant to this article, a  
38 national instant criminal background check must be completed by a dealer  
39 who [~~consents~~] shall submit a request to the division of state police  
40 pursuant to section two hundred twenty-eight of the executive law to  
41 conduct such check~~[, and upon completion of such background check, shall~~  
42 ~~complete a document, the form of which shall be approved by the super-~~  
43 ~~intendent of state police, that identifies and confirms that such check~~  
44 ~~was performed]~~. Before a dealer who [~~consents~~] has submitted a request  
45 to the division of state police to conduct a national instant criminal  
46 background check delivers a firearm, rifle or shotgun to any person,  
47 either (a) NICS shall have issued a "proceed" response [~~to the dealer~~],  
48 or (b) thirty calendar days shall have elapsed since the date the dealer  
49 [~~contacted~~] submitted a request to the division of state police to  
50 contact the NICS to initiate a national instant criminal background  
51 check and NICS has not notified the [~~dealer~~] division of state police  
52 that the transfer of the firearm, rifle or shotgun to such person should  
53 be denied.

54 § 18. Paragraph (c) of subdivision 1 of section 896 of the general  
55 business law, as added by chapter 189 of the laws of 2000, is amended to  
56 read as follows:

1 (c) coordinate with the division of state police to provide access at  
2 the gun show to [~~a firearm dealer licensed under federal law who is~~  
3 ~~authorized to~~] perform a national instant criminal background check  
4 [~~where the seller or transferor of a firearm, rifle or shotgun is not~~  
5 ~~authorized to conduct such a check by (i) requiring firearm exhibitors~~  
6 ~~who are firearm dealers licensed under federal law and who are author-~~  
7 ~~ized to conduct a national instant criminal background check to provide~~  
8 ~~such a check at cost or (ii) designating a specific location at the gun~~  
9 ~~show where a firearm dealer licensed under federal law who is authorized~~  
10 ~~to conduct a national instant criminal background check will be present~~  
11 ~~to perform such a check at cost~~] prior to any firearm sale or transfer.

12 Any firearm dealer licensed under federal law who [~~performs~~] submits a  
13 request to the division of state police to perform a national instant  
14 criminal background check pursuant to this paragraph shall provide the  
15 seller or transferor of the firearm, rifle or shotgun with a copy of the  
16 United States Department of Treasury, Bureau of Alcohol, Tobacco and  
17 Firearms Form ATF F 4473 and such dealer shall maintain such form and  
18 make such form available for inspection by law enforcement agencies for  
19 a period of ten years thereafter.

20 § 19. Subdivision 6 of section 400.03 of the penal law, as added by  
21 chapter 1 of the laws of 2013, is amended to read as follows:

22 6. If the superintendent of state police certifies that background  
23 checks of ammunition purchasers may be conducted through the national  
24 instant criminal background check system, [~~use of that system by~~] a  
25 dealer or seller shall contact the division of state police to conduct  
26 such check which shall be sufficient to satisfy subdivisions four and  
27 five of this section [~~and such checks shall be conducted through such~~  
28 ~~system, provided that a record of such transaction shall be forwarded to~~  
29 ~~the state police in a form determined by the superintendent~~].

30 § 20. The penal law is amended by adding a new section 400.06 to read  
31 as follows:

32 § 400.06 National instant criminal background checks.

33 1. Any dealer in firearms that sells, delivers or otherwise transfers  
34 any firearm shall contact the division of state police to conduct a  
35 national instant criminal background check pursuant to section two  
36 hundred twenty-eight of the executive law.

37 2. Failure to comply with the requirements of this section is a class  
38 A misdemeanor.

39 § 21. The state finance law is amended by adding a new section 99-pp  
40 to read as follows:

41 § 99-pp. Background check fund. 1. There is hereby established in the  
42 joint custody of the state comptroller and commissioner of taxation and  
43 finance a special fund to be known as the "background check fund".

44 2. Such fund shall consist of all revenues received by the comp-  
45 troller, pursuant to the provisions of section two hundred twenty-eight  
46 of the executive law and all other moneys appropriated thereto from any  
47 other fund or source pursuant to law. Nothing contained in this section  
48 shall prevent the state from receiving grants, gifts or bequests for the  
49 purposes of the fund as defined in this section and depositing them into  
50 the fund according to law.

51 3. The moneys of the background check fund, following appropriation by  
52 the legislature, shall be allocated for the direct costs associated with  
53 performing background checks pursuant to section two hundred twenty-  
54 eight of the executive law.

55 4. The state comptroller may invest any moneys in the background check  
56 fund not expended for the purpose of this section as provided by law.

1 The state comptroller shall credit any interest and income derived from  
 2 the deposit and investment of moneys in the background check fund to the  
 3 background check fund.

4 5. (a) Any unexpended and unencumbered moneys remaining in the back-  
 5 ground check fund at the end of a fiscal year shall remain in the back-  
 6 ground check fund and shall not be credited to any other fund.

7 (b) To the extent practicable, any such remaining funds shall be used  
 8 to reduce the amount of the fee described in subdivision two of section  
 9 two hundred twenty-eight of the executive law.

10 § 22. Subdivision 19 of section 265.00 of the penal law, as amended by  
 11 chapter 150 of the laws of 2020, is amended to read as follows:

12 19. "Duly authorized instructor" means (a) a duly commissioned officer  
 13 of the United States army, navy, marine corps or coast guard, or of the  
 14 national guard of the state of New York; or (b) a duly qualified adult  
 15 citizen of the United States who has been granted a certificate as an  
 16 instructor in small arms practice issued by the United States army, navy  
 17 or marine corps, or by the adjutant general of this state, or by the  
 18 division of criminal justice services, or by the national rifle associ-  
 19 ation of America, a not-for-profit corporation duly organized under the  
 20 laws of this state; (c) by a person duly qualified and designated by the  
 21 department of environmental conservation [~~under paragraph e of subdivi-~~  
 22 ~~sion three of section 11-0713 of the environmental conservation law~~] as  
 23 its agent in the giving of instruction and the making of certifications  
 24 of qualification in responsible hunting practices; or (d) a New York  
 25 state 4-H certified shooting sports instructor.

26 § 23. Subdivision 18 of section 400.00 of the penal law, as added by  
 27 chapter 135 of the laws of 2019, is amended and a new subdivision 19 is  
 28 added to read as follows:

29 18. Notice. Upon the issuance of a license, the licensing officer  
 30 shall issue therewith, and such licensee shall attest to the receipt of,  
 31 the following [~~notice~~] information and notifications: (a) the grounds  
 32 for which the license issued may be revoked, which shall include but not  
 33 be limited to the areas and locations for which the licenses issued  
 34 under paragraph (f) of subdivision two of this section prohibits the  
 35 possession of firearms, rifles, and shotguns, and that a conviction  
 36 under sections 265.01-d and 265.01-e of this chapter are felonies for  
 37 which licensure will be revoked;

38 (b) a notification regarding the requirements for safe storage which  
 39 shall be in conspicuous and legible twenty-four point type on eight and  
 40 one-half inches by eleven inches paper stating in bold print the follow-  
 41 ing:

42 WARNING: RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE.  
 43 WHEN STORED IN A HOME FIREARMS, RIFLES, OR SHOTGUNS MUST EITHER BE  
 44 STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY OR NOT  
 45 BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR  
 46 OTHER LAWFUL POSSESSOR IF A CHILD UNDER THE AGE OF EIGHTEEN RESIDES IN  
 47 THE HOME OR IS PRESENT, OR IF THE OWNER OR POSSESSOR RESIDES WITH A  
 48 PERSON PROHIBITED FROM POSSESSING A FIREARM UNDER STATE OR FEDERAL LAW.  
 49 FIREARMS SHOULD BE STORED [~~UNLOADED AND LOCKED~~] BY REMOVING THE AMMUNI-  
 50 TION FROM AND SECURELY LOCKING SUCH FIREARM IN A LOCATION SEPARATE FROM  
 51 AMMUNITION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR OTHER PROHIBITED  
 52 PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH. WHEN STORED IN A  
 53 VEHICLE OUTSIDE THE OWNER'S IMMEDIATE POSSESSION OR CONTROL, FIREARMS,  
 54 RIFLES, AND SHOTGUNS MUST BE STORED IN AN APPROPRIATE SAFE STORAGE  
 55 DEPOSITORY AND OUT OF SIGHT FROM OUTSIDE OF THE VEHICLE.

1 (c) any other information necessary to ensure such licensee is aware  
2 of their responsibilities as a license holder.

3 Nothing in this subdivision shall be deemed to affect, impair or  
4 supersede any special or local law relating to providing notice regard-  
5 ing the safe storage of rifles, shotguns or firearms.

6 19. Prior to the issuance or renewal of a license under paragraph (f)  
7 of subdivision two of this section, issued or renewed on or after the  
8 effective date of this subdivision, an applicant shall complete an  
9 in-person live firearms safety course conducted by a duly authorized  
10 instructor with curriculum approved by the division of criminal justice  
11 services and the superintendent of state police, and meeting the follow-  
12 ing requirements: (a) a minimum of sixteen hours of in-person live  
13 curriculum approved by the division of criminal justice services and the  
14 superintendent of state police, conducted by a duly authorized instruc-  
15 tor approved by the division of criminal justice services, and shall  
16 include but not be limited to the following topics: (i) general firearm  
17 safety; (ii) safe storage requirements and general secure storage best  
18 practices; (iii) state and federal gun laws; (iv) situational awareness;  
19 (v) conflict de-escalation; (vi) best practices when encountering law  
20 enforcement; (vii) the statutorily defined sensitive places in subdivi-  
21 sion two of section 265.01-e of this chapter and the restrictions on  
22 possession on restricted places under section 265.01-d of this chapter;  
23 (viii) conflict management; (ix) use of deadly force; (x) suicide  
24 prevention; and (xi) the basic principles of marksmanship; and (b) a  
25 minimum of two hours of a live-fire range training course. The applicant  
26 shall be required to demonstrate proficiency by scoring a minimum of  
27 eighty percent correct answers on a written test for the curriculum  
28 under paragraph (a) of this subdivision and the proficiency level deter-  
29 mined by the rules and regulations promulgated by the division of crimi-  
30 nal justice services and the superintendent of state police for the  
31 live-fire range training under paragraph (b) of this subdivision. Upon  
32 demonstration of such proficiency, a certificate of completion shall be  
33 issued to such applicant in the applicant's name and endorsed and  
34 affirmed under the penalties of perjury by such duly authorized instruc-  
35 tor. An applicant required to complete the training required herein  
36 prior to renewal of a license issued prior to the effective date of this  
37 subdivision shall only be required to complete such training for the  
38 first renewal of such license after such effective date.

39 § 24. Subdivisions 11 and 12 of section 265.00 of the penal law are  
40 amended to read as follows:

41 11. "Rifle" means a weapon designed or redesigned, made or remade, and  
42 intended to be fired from the shoulder and designed or redesigned and  
43 made or remade to use the energy of the explosive [~~in a fixed metallic~~  
44 ~~cartridge~~] to fire only a single projectile through a rifled bore for  
45 each single pull of the trigger using either: (a) fixed metallic  
46 cartridge; or (b) each projectile and explosive charge are loaded indi-  
47 vidually for each shot discharged. In addition to common, modern usage,  
48 rifles include those using obsolete ammunition not commonly available in  
49 commercial trade, or that load through the muzzle and fire a single  
50 projectile with each discharge, or loading, including muzzle loading  
51 rifles, flintlock rifles, and black powder rifles.

52 12. "Shotgun" means a weapon designed or redesigned, made or remade,  
53 and intended to be fired from the shoulder and designed or redesigned  
54 and made or remade to use the energy of the explosive [~~in a fixed shot-~~  
55 ~~gun shell~~] to fire through a smooth or rifled bore either a number of  
56 ball shot or a single projectile for each single pull of the trigger

1 using either: (a) a fixed shotgun shell; or (b) a projectile or number  
2 of ball shot and explosive charge are loaded individually for each shot  
3 discharged. In addition to common, modern usage, shotguns include those  
4 using obsolete ammunition not commonly available in commercial trade, or  
5 that load through the muzzle and fires ball shot with each discharge, or  
6 loading, including muzzle loading shotguns, flintlock shotguns, and  
7 black powder shotguns.

8 § 25. Severability. If any clause, sentence, paragraph or section of  
9 this act shall be adjudged by any court of competent jurisdiction to be  
10 invalid, the judgment shall not affect, impair or invalidate the remain-  
11 der thereof, but shall be confined in its operation to the clause,  
12 sentence, paragraph or section thereof directly involved in the contro-  
13 versy in which the judgment shall have been rendered.

14 § 26. This act shall take effect on the first of September next  
15 succeeding the date on which it shall have become a law; provided,  
16 however:

17 (a) the amendments to subdivision 1 and subdivision 4-b of section  
18 400.00 of the penal law made by section one of this act shall apply only  
19 to licenses for which an application is made on or after the effective  
20 date of this act;

21 (b) if chapter 208 of the laws of 2022 shall not have taken effect on  
22 or before such date then the amendments made to paragraph (j) of subdivi-  
23 sion one of section 400.00 of the penal law made by section one of  
24 this act shall take effect on the same date and in the same manner as  
25 such chapter of the laws of 2022, takes effect;

26 (c) the amendments to sections 270.20, 270.21 and 270.22 of the penal  
27 law made by sections eleven, twelve and thirteen of this act, the amend-  
28 ments to section 396-eee of the general business law as amended by  
29 section fourteen of this act, and the amendments to section 144-a of the  
30 executive law as amended by section fifteen of this act, shall take  
31 effect on the same date and in the same manner as chapter 210 of the  
32 laws of 2022, takes effect;

33 (d) if chapter 207 of the laws of 2022 shall not have taken effect on  
34 or before such date then the amendments to subdivision 11 of section  
35 400.00 of the penal law made by section one of this act shall take  
36 effect on the same date and in the same manner as such chapter of the  
37 laws of 2022, takes effect;

38 (e) if chapter 212 of the laws of 2022 shall not have taken effect on  
39 or before such date then the amendments to subdivision 2 of section  
40 400.00 of the penal law made by section one of this act shall take  
41 effect on the same date and in the same manner as such chapter of the  
42 laws of 2022, takes effect;

43 (f) sections sixteen, seventeen, eighteen, nineteen, twenty, twenty-  
44 one and twenty-two shall take effect July 15, 2023; and

45 (g) subdivision 4-a of section 400.00 of the penal law, as amended by  
46 section one of this act, shall take effect April 1, 2023.



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

See Attachment

Erie County

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Nicolas J. Rotsko, Phillips Lytle LLP, One Canalside, 125 Main St. Buffalo, NY 14203-2886; Phone (716) 847-5467; Fax (716) 852-6100

DEFENDANTS

See Attachment

County of Residence of First Listed Defendant Albany County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 US Government Plaintiff, 2 US Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of: Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): U.S. Civil Statute: 42 USC § 1983. Brief description of cause: Civil action for deprivation of rights, specifically the right to keep & bear arms under U.S. Const. amends. II & XIV

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE John L. Sinatra, Jr. DOCKET NUMBER 1:22-cv-00541-JLS

DATE 09/13/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Nicolas J. Rotsko

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

**CIVIL COVER SHEET ATTACHMENT**

**(a) PLAINTIFFS**

John Boron, Brett Christian, Firearms Policy Coalition, Inc., and Second Amendment Foundation.

**(a) DEFENDANTS**

Kevin P. Bruen, in his official capacity as Superintendent of the New York State Police,  
and John J. Flynn, in his official capacity as District Attorney for the County of Erie, New York.