

9902

I N A S S E M B L Y

February 9, 2010

Introduced by M. of A. PERALTA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to possession of a firearm, rifle or shotgun while under the influence of alcohol or drugs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

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

10 (B) SUBDIVISION NINE OF SECTION 265.01 OF THIS CHAPTER MAY INCLUDE A
11 FINE, FIXED BY THE COURT, NOT EXCEEDING TEN THOUSAND DOLLARS.

12 S 2. Section 265.00 of the penal law is amended by adding a new subdi-
13 vision 24 to read as follows:

14 24. "DRUG" MEANS ANY CONTROLLED SUBSTANCE LISTED IN SECTION
15 THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW.

16 S 3. Subdivisions 2, 4, 5, 6, 7 and 8 of section 265.01 of the penal
17 law, subdivision 2 as amended by chapter 220 of the laws of 1988, subdivi-
18 sions 4, 5 and 6 as added by chapter 1041 of the laws of 1974, subdivi-
19 sion 7 as added by chapter 807 of the laws of 1981 and subdivision 8
20 as added by chapter 646 of the laws of 1986, are amended and a new
21 subdivision 9 is added to read as follows:

22 (2) He OR SHE possesses any dagger, dangerous knife, dirk, razor,
23 stiletto, imitation pistol, or any other dangerous or deadly instrument
24 or weapon with intent to use the same unlawfully against another; or

25 (4) He OR SHE possesses a rifle or shotgun and has been convicted of a
26 felony or serious offense; or

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

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

LBD15617-02-0

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

14 (7) He OR SHE knowingly possesses a bullet containing an explosive
15 substance designed to detonate upon impact[.]; OR

16 (8) He OR SHE possesses any armor piercing ammunition with intent to
17 use the same unlawfully against another[.]; OR

18 (9) (A) HE OR SHE POSSESSES A FIREARM, RIFLE OR SHOTGUN OUTSIDE OF HIS
19 OR HER HOME WHILE:

20 (I) HE OR SHE IS IN AN INTOXICATED CONDITION; OR

21 (II) HE OR SHE HAS .08 OF ONE PER CENTUM OR MORE BY WEIGHT OF ALCOHOL
22 IN THE PERSON'S BLOOD AS SHOWN BY CHEMICAL ANALYSIS OF SUCH PERSON'S
23 BLOOD, BREATH, URINE OR SALIVA, MADE PURSUANT TO SECTION 265.45 OF THIS
24 ARTICLE; OR

25 (III) HIS OR HER ABILITY TO SAFELY POSSESS SUCH FIREARM, RIFLE OR
26 SHOTGUN IS IMPAIRED BY CONSUMPTION OF ALCOHOL; OR

27 (IV) HIS OR HER ABILITY TO SAFELY POSSESS SUCH FIREARM, RIFLE OR SHOT-
28 GUN IS IMPAIRED BY USE OF ANY DRUG; OR

29 (V) HIS OR HER ABILITY TO SAFELY POSSESS SUCH FIREARM, RIFLE OR SHOT-
30 GUN IS IMPAIRED BY THE COMBINED INFLUENCE OF DRUGS OR OF ALCOHOL AND ANY
31 DRUG OR DRUGS.

32 (B) A PERSON MAY BE CONVICTED OF A VIOLATION OF SUBPARAGRAPH (I), (II)
33 OR (III) OF PARAGRAPH (A) OF THIS SUBDIVISION, NOTWITHSTANDING THAT THE
34 CHARGE LAID BEFORE THE COURT ALLEGED A VIOLATION OF SUBPARAGRAPH (I) OR
35 (II) OF PARAGRAPH (A) OF THIS SUBDIVISION, AND REGARDLESS OF WHETHER OR
36 NOT SUCH CONVICTION IS BASED ON A PLEA OF GUILTY.

37 S 4. Paragraph 3 of subdivision a of section 265.20 of the penal law,
38 as amended by chapter 210 of the laws of 1999, is amended to read as
39 follows:

40 3. Possession of a pistol or revolver by a person to whom a license
41 therefor has been issued as provided under section 400.00 or 400.01 of
42 this chapter; provided, that such a license shall not preclude a
43 conviction for [the] EITHER offense defined in subdivision three OR NINE
44 of section 265.01 of this article.

45 S 5. The penal law is amended by adding two new sections 265.45 and
46 265.50 to read as follows:
47 S 265.45 TESTING.

48 1. FIELD TESTING. EVERY PERSON WHO POSSESSES A FIREARM, RIFLE OR SHOT-
49 GUN WHICH HAS BEEN BRANDISHED, DISPLAYED OUTSIDE A HOLSTER, DISCHARGED
50 OR OTHERWISE USED (OTHER THAN IN THE PERSON'S HOME, AT AN INDOOR OR
51 OUTDOOR SHOOTING RANGE, OR IN AN AREA WHERE HUNTING IS PERMITTED WITH
52 THE WEAPON), OR WHICH IS POSSESSED, DISPLAYED OR DISCHARGED IN VIOLATION
53 OF ANY PROVISION OF THIS CHAPTER SHALL, AT THE REQUEST OF A POLICE OFFI-
54 CER, SUBMIT TO A BREATH TEST TO BE ADMINISTERED BY THE POLICE OFFICER,
55 UNLESS SUCH PERSON DEMONSTRATES TO SUCH POLICE OFFICER'S SATISFACTION
56 THAT HE OR SHE IS NOT SUBJECT TO THE PROVISIONS OF SUBDIVISION NINE OF

SECTION 265.01 OF THIS ARTICLE. IF SUCH TEST INDICATES THAT SUCH POSSESSOR HAS CONSUMED ALCOHOL, THE POLICE OFFICER MAY REQUEST SUCH POSSESSOR TO SUBMIT TO A CHEMICAL TEST IN THE MANNER SET FORTH IN SUBDIVISION TWO OF THIS SECTION.

2. CHEMICAL TESTS. (A) WHEN AUTHORIZED. ANY PERSON WHO POSSESSES A FIREARM, RIFLE OR SHOTGUN IN THIS STATE, OTHER THAN IN SUCH PERSON'S HOME, SHALL BE DEEMED TO HAVE GIVEN CONSENT TO A CHEMICAL TEST OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE, OR SALIVA, FOR THE PURPOSE OF DETERMINING THE ALCOHOLIC AND/OR DRUG CONTENT OF THE BLOOD PROVIDED THAT SUCH TEST IS ADMINISTERED BY OR AT THE DIRECTION OF A POLICE OFFICER WITH RESPECT TO A CHEMICAL TEST OF BREATH, URINE OR SALIVA OR, WITH RESPECT TO A CHEMICAL TEST OF BLOOD, AT THE DIRECTION OF A POLICE OFFICER:

(1) HAVING REASONABLE GROUNDS TO BELIEVE SUCH PERSON POSSESSED A FIREARM, RIFE OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE AND WITHIN TWO HOURS AFTER SUCH PERSON HAS BEEN PLACED UNDER ARREST FOR ANY SUCH VIOLATION; OR

(2) WITHIN TWO HOURS AFTER A BREATH TEST, AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION, INDICATES THAT ALCOHOL HAS BEEN CONSUMED BY SUCH PERSON AND IN ACCORDANCE WITH THE RULES AND REGULATIONS ESTABLISHED BY THE POLICE FORCE OF WHICH THE OFFICER IS A MEMBER.

FOR THE PURPOSES OF THIS PARAGRAPH, "REASONABLE GROUNDS" TO BELIEVE THAT A PERSON POSSESSED A FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE SHALL BE DETERMINED BY VIEWING THE TOTALITY OF CIRCUMSTANCES SURROUNDING THE INCIDENT WHICH, WHEN TAKEN TOGETHER, INDICATE THAT THE POSSESSION VIOLATED SUCH SUBDIVISION. SUCH CIRCUMSTANCES MAY INCLUDE ANY VISIBLE OR BEHAVIORAL INDICATION OF ALCOHOL OR DRUG CONSUMPTION BY SUCH PERSON, THE EXISTENCE OF AN OPEN CONTAINER CONTAINING OR HAVING CONTAINED AN ALCOHOLIC BEVERAGE IN OR AROUND THE VICINITY OF SUCH PERSON, OR ANY OTHER EVIDENCE SURROUNDING THE CIRCUMSTANCES OF THE INCIDENT WHICH INDICATES THAT THE PERSON WAS IN POSSESSION OF A FIREARM, RIFLE OR SHOTGUN AFTER HAVING CONSUMED ALCOHOL OR DRUGS AT THE TIME OF THE INCIDENT.

(B) REPORT OF REFUSAL. (1) IF: (A) SUCH PERSON HAVING BEEN PLACED UNDER ARREST; OR (B) AFTER A BREATH TEST INDICATES THE PRESENCE OF ALCOHOL IN THE PERSON'S SYSTEM; AND HAVING THEREAFTER BEEN REQUESTED TO SUBMIT TO SUCH CHEMICAL TEST AND HAVING BEEN INFORMED THAT THE PERSON'S LICENSE ISSUED PURSUANT TO ARTICLE FOUR HUNDRED OF THIS CHAPTER SHALL BE IMMEDIATELY SUSPENDED AND SUBSEQUENTLY REVOKED WHETHER OR NOT THE PERSON IS FOUND GUILTY OF THE CHARGE FOR WHICH SUCH PERSON IS ARRESTED OR DETAINED, REFUSES TO SUBMIT TO SUCH CHEMICAL TEST OR ANY PORTION THEREOF, UNLESS A COURT ORDER HAS BEEN GRANTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION, THE TEST SHALL NOT BE GIVEN AND A WRITTEN REPORT OF SUCH REFUSAL SHALL BE IMMEDIATELY MADE BY THE POLICE OFFICER BEFORE WHOM SUCH REFUSAL WAS MADE. SUCH REPORT MAY BE VERIFIED BY HAVING THE REPORT SWORN TO, OR BY AFFIXING TO SUCH REPORT A FORM NOTICE THAT FALSE STATEMENTS MADE THEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THIS CHAPTER AND SUCH FORM NOTICE TOGETHER WITH THE SUBSCRIPTION OF THE DEPONENT SHALL CONSTITUTE A VERIFICATION OF THE REPORT.

(2) THE REPORT OF THE POLICE OFFICER SHALL SET FORTH REASONABLE GROUNDS TO BELIEVE SUCH ARRESTED PERSON HAD POSSESSED A FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE, THAT SAID PERSON HAD REFUSED TO SUBMIT TO SUCH CHEMICAL TEST, AND THAT NO CHEMICAL TEST WAS ADMINISTERED PURSUANT TO THE REQUIREMENTS

1 OF SUBDIVISION THREE OF THIS SECTION. THE REPORT SHALL BE PRESENTED TO
2 THE COURT UPON ARRAIGNMENT OF AN ARRESTED PERSON.

3 (3) FOR PERSONS PLACED UNDER ARREST FOR A VIOLATION OF SUBDIVISION
4 NINE OF SECTION 265.01 OF THIS ARTICLE, THE LICENSE SHALL, UPON THE
5 BASIS OF SUCH WRITTEN REPORT, BE TEMPORARILY SUSPENDED BY THE COURT
6 WITHOUT NOTICE PENDING THE DETERMINATION OF A HEARING AS PROVIDED IN
7 PARAGRAPH (C) OF THIS SUBDIVISION. COPIES OF SUCH REPORT MUST BE TRANS-
8 MITTED BY THE COURT TO THE LICENSING AUTHORITY AND SUCH TRANSMITTAL MAY
9 NOT BE WAIVED EVEN WITH THE CONSENT OF ALL THE PARTIES. SUCH REPORT
10 SHALL BE FORWARDED TO THE LICENSING AUTHORITY WITHIN FORTY-EIGHT HOURS
11 OF SUCH ARRAIGNMENT.

12 (C) HEARINGS. ANY PERSON WHOSE LICENSE HAS BEEN SUSPENDED PURSUANT TO
13 PARAGRAPH (B) OF THIS SUBDIVISION IS ENTITLED TO A HEARING IN ACCORDANCE
14 WITH A HEARING SCHEDULE TO BE PROMULGATED BY THE LICENSING AUTHORITY. IF
15 THE LICENSING AUTHORITY FAILS TO PROVIDE FOR SUCH HEARING FIFTEEN DAYS
16 AFTER THE DATE OF THE ARRAIGNMENT OF THE ARRESTED PERSON, THE LICENSE OF
17 SUCH PERSON SHALL BE REINSTATED PENDING A HEARING PURSUANT TO THIS
18 SECTION. THE HEARING SHALL BE LIMITED TO THE FOLLOWING ISSUES: (1) DID
19 THE POLICE OFFICER HAVE REASONABLE GROUNDS TO BELIEVE THAT SUCH PERSON
20 POSSESSED A FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE
21 OF SECTION 265.01 OF THIS ARTICLE; (2) DID THE POLICE OFFICER MAKE A
22 LAWFUL ARREST OF SUCH PERSON; (3) WAS SUCH PERSON GIVEN SUFFICIENT WARN-
23 ING, IN CLEAR OR UNEQUIVOCAL LANGUAGE, PRIOR TO SUCH REFUSAL THAT SUCH
24 REFUSAL TO SUBMIT TO SUCH CHEMICAL TEST OR ANY PORTION THEREOF, WOULD
25 RESULT IN THE IMMEDIATE SUSPENSION AND SUBSEQUENT REVOCATION OF SUCH
26 PERSON'S LICENSE WHETHER OR NOT SUCH PERSON IS FOUND GUILTY OF THE
27 CHARGE FOR WHICH THE ARREST WAS MADE; AND (4) DID SUCH PERSON REFUSE TO
28 SUBMIT TO SUCH CHEMICAL TEST OR ANY PORTION THEREOF. IF, AFTER SUCH
29 HEARING, THE HEARING OFFICER, ACTING ON BEHALF OF THE LICENSING AUTHORI-
30 TY, FINDS ON ANY ONE OF SAID ISSUES IN THE NEGATIVE, THE HEARING OFFICER
31 SHALL IMMEDIATELY TERMINATE ANY SUSPENSION ARISING FROM SUCH REFUSAL.
32 IF, AFTER SUCH HEARING, THE HEARING OFFICER, ACTING ON BEHALF OF THE
33 LICENSING AUTHORITY FINDS ALL OF THE ISSUES IN THE AFFIRMATIVE, SUCH
34 OFFICER SHALL IMMEDIATELY REVOKE THE LICENSE IN ACCORDANCE WITH THE
35 PROVISIONS OF PARAGRAPH (D) OF THIS SUBDIVISION. A PERSON WHO HAS HAD A
36 LICENSE SUSPENDED OR REVOKED PURSUANT TO THIS SUBDIVISION MAY APPEAL THE
37 FINDINGS OF THE HEARING OFFICER IN ACCORDANCE WITH THE PROVISIONS OF
38 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. ANY PERSON
39 MAY WAIVE THE RIGHT TO A HEARING UNDER THIS SECTION. FAILURE BY SUCH
40 PERSON TO APPEAR FOR THE SCHEDULED HEARING SHALL CONSTITUTE A WAIVER OF
41 SUCH HEARING, PROVIDED, HOWEVER, THAT SUCH PERSON MAY PETITION THE
42 LICENSING AUTHORITY FOR A NEW HEARING WHICH SHALL BE HELD AS SOON AS
43 PRACTICABLE.

44 (D) REVOCATIONS. ANY LICENSE WHICH HAS BEEN REVOKED PURSUANT TO PARA-
45 GRAPH (C) OF THIS SUBDIVISION SHALL NOT BE RESTORED FOR AT LEAST ONE
46 YEAR AFTER SUCH REVOCATION, NOR THEREAFTER, EXCEPT IN THE DISCRETION OF
47 THE LICENSING AUTHORITY IN LIGHT OF THE TOTALITY OF CIRCUMSTANCES
48 SURROUNDING THE OFFENSE. HOWEVER, NO SUCH LICENSE SHALL BE RESTORED FOR
49 AT LEAST EIGHTEEN MONTHS AFTER SUCH REVOCATION, NOR THEREAFTER EXCEPT IN
50 THE DISCRETION OF THE LICENSING AUTHORITY IN LIGHT OF THE TOTALITY OF
51 CIRCUMSTANCES SURROUNDING THE OFFENSE, IN ANY CASE WHERE THE PERSON HAS
52 HAD A PRIOR REVOCATION RESULTING FROM REFUSAL TO SUBMIT TO A CHEMICAL
53 TEST, OR HAS BEEN CONVICTED OF OR FOUND TO BE IN VIOLATION OF SUBDIVI-
54 SION NINE OF SECTION 265.01 OF THIS ARTICLE NOT ARISING OUT OF THE SAME
55 INCIDENT, WITHIN THE FIVE YEARS IMMEDIATELY PRECEDING THE DATE OF SUCH
56 REVOCATION.

1 (E) REGULATIONS. A LICENSING AUTHORITY OR POLICE FORCE MAY PROMULGATE
2 SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO EFFECTUATE THE
3 PROVISIONS OF THIS SUBDIVISION AND SUBDIVISION ONE OF THIS SECTION.

4 (F) EVIDENCE. EVIDENCE OF A REFUSAL TO SUBMIT TO SUCH CHEMICAL TEST OR
5 ANY PORTION THEREOF SHALL BE ADMISSIBLE IN ANY TRIAL, PROCEEDING OR
6 HEARING BASED UPON A VIOLATION OF THE PROVISIONS OF SUBDIVISION NINE OF
7 SECTION 265.01 OF THIS ARTICLE BUT ONLY UPON A SHOWING THAT THE PERSON
8 WAS GIVEN SUFFICIENT WARNING, IN CLEAR AND UNEQUIVOCAL LANGUAGE, OF THE
9 EFFECT OF SUCH REFUSAL AND THAT THE PERSON PERSISTED IN THE REFUSAL.

10 (G) RESULTS. UPON THE REQUEST OF THE PERSON WHO WAS TESTED, THE
11 RESULTS OF SUCH TEST SHALL BE MADE AVAILABLE TO SUCH PERSON.

12 3. COMPULSORY CHEMICAL TESTS. (A) COURT ORDERED CHEMICAL TESTS.
13 NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, NO
14 PERSON SUBJECT TO THE PROVISIONS OF SUBDIVISION NINE OF SECTION 265.01
15 OF THIS ARTICLE WHO POSSESSES A FIREARM, RIFLE OR SHOTGUN (OTHER THAN IN
16 THE PERSON'S HOME, AT AN INDOOR OR OUTDOOR SHOOTING RANGE, OR AN AREA
17 WHERE HUNTING IS PERMITTED WITH THE WEAPON) MAY REFUSE TO SUBMIT TO A
18 CHEMICAL TEST OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR
19 SALIVA, FOR THE PURPOSE OF DETERMINING THE ALCOHOLIC AND/OR DRUG CONTENT
20 OF THE BLOOD WHEN A COURT ORDER FOR SUCH CHEMICAL TEST HAS BEEN ISSUED
21 IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION.

22 (B) WHEN AUTHORIZED. UPON REFUSAL BY ANY PERSON TO SUBMIT TO A CHEMI-
23 CAL TEST OR ANY PORTION THEREOF AS DESCRIBED IN PARAGRAPH (A) OF THIS
24 SUBDIVISION, THE TEST SHALL NOT BE GIVEN UNLESS A POLICE OFFICER OR A
25 DISTRICT ATTORNEY, AS DEFINED IN SUBDIVISION THIRTY-TWO OF SECTION 1.20
26 OF THE CRIMINAL PROCEDURE LAW, REQUESTS AND OBTAINS A COURT ORDER TO
27 COMPEL A PERSON TO SUBMIT TO A CHEMICAL TEST TO DETERMINE THE ALCOHOLIC
28 OR DRUG CONTENT OF THE PERSON'S BLOOD UPON A FINDING OF REASONABLE CAUSE
29 TO BELIEVE THAT:

30 (1) SUCH PERSON POSSESSED A FIREARM, RIFLE OR SHOTGUN WITH WHICH
31 ANOTHER PERSON WAS KILLED OR SUFFERED SERIOUS PHYSICAL INJURY AS DEFINED
32 IN SECTION 10.00 OF THIS CHAPTER; AND

33 (2) (A) EITHER SUCH PERSON POSSESSED THE FIREARM, RIFLE OR SHOTGUN IN
34 VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE, OR

35 (B) A BREATH TEST ADMINISTERED BY A POLICE OFFICER IN ACCORDANCE WITH
36 SUBDIVISION ONE OF THIS SECTION INDICATES THAT ALCOHOL HAS BEEN CONSUMED
37 BY SUCH PERSON; AND

38 (3) SUCH PERSON HAS BEEN PLACED UNDER LAWFUL ARREST; AND

39 (4) SUCH PERSON HAS REFUSED TO SUBMIT TO A CHEMICAL TEST OR ANY
40 PORTION THEREOF, REQUESTED IN ACCORDANCE WITH THE PROVISIONS OF PARA-
41 GRAPH (A) OF SUBDIVISION TWO OF THIS SECTION OR IS UNABLE TO GIVE
42 CONSENT TO SUCH A TEST.

43 (C) REASONABLE CAUSE; DEFINITION. FOR THE PURPOSE OF THIS SUBDIVISION
44 "REASONABLE CAUSE" SHALL BE DETERMINED BY VIEWING THE TOTALITY OF
45 CIRCUMSTANCES SURROUNDING THE INCIDENT WHICH, WHEN TAKEN TOGETHER, INDI-
46 CATE THAT THE PERSON POSSESSED A FIREARM, RIFLE OR SHOTGUN IN VIOLATION
47 OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE. SUCH CIRCUM-
48 STANCES MAY INCLUDE, BUT ARE NOT LIMITED TO: EVIDENCE THAT SUCH PERSON
49 WAS BRANDISHING OR USING THE FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF
50 ANY PROVISION OF THIS ARTICLE OR ANY OTHER CRIME AT THE TIME OF THE
51 INCIDENT; ANY VISIBLE INDICATION OF ALCOHOL OR DRUG CONSUMPTION OR
52 IMPAIRMENT BY SUCH PERSON; THE EXISTENCE OF AN OPEN CONTAINER CONTAINING
53 AN ALCOHOLIC BEVERAGE IN OR AROUND THE VICINITY OF SUCH PERSON; ANY
54 OTHER EVIDENCE SURROUNDING THE CIRCUMSTANCES OF THE INCIDENT WHICH INDI-
55 CATES THAT THE PERSON POSSESSED A FIREARM, RIFLE OR SHOTGUN WHILE

1 IMPAIRED BY THE CONSUMPTION OF ALCOHOL OR DRUGS OR WAS INTOXICATED AT
2 THE TIME OF THE INCIDENT.

3 (D) COURT ORDER; PROCEDURE. (1) AN APPLICATION FOR A COURT ORDER TO
4 COMPEL SUBMISSION TO A CHEMICAL TEST OR ANY PORTION THEREOF, MAY BE MADE
5 TO ANY SUPREME COURT JUSTICE, COUNTY COURT JUDGE OR DISTRICT COURT JUDGE
6 IN THE JUDICIAL DISTRICT IN WHICH THE INCIDENT OCCURRED, OR IF THE INCI-
7 DENT OCCURRED IN THE CITY OF NEW YORK BEFORE ANY SUPREME COURT JUSTICE
8 OR JUDGE OF THE CRIMINAL COURT OF THE CITY OF NEW YORK. SUCH APPLICA-
9 TION MAY BE COMMUNICATED BY TELEPHONE, RADIO OR OTHER MEANS OF ELECTRON-
10 IC COMMUNICATION, OR IN PERSON.

11 (2) THE APPLICANT MUST PROVIDE IDENTIFICATION BY NAME AND TITLE AND
12 MUST STATE THE PURPOSE OF THE COMMUNICATION. UPON BEING ADVISED THAT AN
13 APPLICATION FOR A COURT ORDER TO COMPEL SUBMISSION TO A CHEMICAL TEST IS
14 BEING MADE, THE COURT SHALL PLACE UNDER OATH THE APPLICANT AND ANY OTHER
15 PERSON PROVIDING INFORMATION IN SUPPORT OF THE APPLICATION AS PROVIDED
16 IN SUBPARAGRAPH THREE OF THIS PARAGRAPH. AFTER BEING SWORN THE APPLICANT
17 MUST STATE THAT THE PERSON FROM WHOM THE CHEMICAL TEST WAS REQUESTED
18 POSSESSED A FIREARM, RIFLE OR SHOTGUN WITH WHICH ANOTHER PERSON WAS
19 KILLED OR SERIOUSLY INJURED AND, BASED UPON THE TOTALITY OF CIRCUM-
20 STANCES, THERE IS REASONABLE CAUSE TO BELIEVE THAT SUCH PERSON POSSESSED
21 A FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE OF SECTION
22 265.01 OF THIS ARTICLE AND, AFTER BEING PLACED UNDER LAWFUL ARREST SUCH
23 PERSON REFUSED TO SUBMIT TO A CHEMICAL TEST OR ANY PORTION THEREOF, IN
24 ACCORDANCE WITH THE PROVISIONS OF THIS SECTION OR IS UNABLE TO GIVE
25 CONSENT TO SUCH A TEST OR ANY PORTION THEREOF. THE APPLICANT MUST MAKE
26 SPECIFIC ALLEGATIONS OF FACT TO SUPPORT SUCH STATEMENT. ANY OTHER PERSON
27 PROPERLY IDENTIFIED, MAY PRESENT SWORN ALLEGATIONS OF FACT IN SUPPORT OF
28 THE APPLICANT'S STATEMENT.

29 (3) UPON BEING ADVISED THAT AN ORAL APPLICATION FOR A COURT ORDER TO
30 COMPEL A PERSON TO SUBMIT TO A CHEMICAL TEST IS BEING MADE, A JUDGE OR
31 JUSTICE SHALL PLACE UNDER OATH THE APPLICANT AND ANY OTHER PERSON
32 PROVIDING INFORMATION IN SUPPORT OF THE APPLICATION. SUCH OATH OR OATHS
33 AND ALL OF THE REMAINING COMMUNICATION MUST BE RECORDED, EITHER BY MEANS
34 OF A VOICE RECORDING DEVICE OR VERBATIM STENOGRAPHIC OR VERBATIM LONG-
35 HAND NOTES. IF A VOICE RECORDING DEVICE IS USED OR A STENOGRAPHIC RECORD
36 MADE, THE JUDGE MUST HAVE THE RECORD TRANSCRIBED, CERTIFY TO THE ACCURA-
37 CY OF THE TRANSCRIPTION AND FILE THE ORIGINAL RECORD AND TRANSCRIPTION
38 WITH THE COURT WITHIN SEVENTY-TWO HOURS OF THE ISSUANCE OF THE COURT
39 ORDER. IF LONGHAND NOTES ARE TAKEN, THE JUDGE SHALL SUBSCRIBE A COPY AND
40 FILE IT WITH THE COURT WITHIN TWENTY-FOUR HOURS OF THE ISSUANCE OF THE
41 ORDER.

42 (4) IF THE COURT IS SATISFIED THAT THE REQUIREMENTS FOR THE ISSUANCE
43 OF A COURT ORDER PURSUANT TO THE PROVISIONS OF PARAGRAPH (B) OF THIS
44 SUBDIVISION HAVE BEEN MET, IT MAY GRANT THE APPLICATION AND ISSUE AN
45 ORDER REQUIRING THE ACCUSED TO SUBMIT TO A CHEMICAL TEST TO DETERMINE
46 THE ALCOHOLIC AND/OR DRUG CONTENT OF HIS OR HER BLOOD AND ORDERING THE
47 WITHDRAWAL OF A BLOOD SAMPLE IN ACCORDANCE WITH THE PROVISIONS OF PARA-
48 GRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION. WHEN A JUDGE OR JUSTICE
49 DETERMINES TO ISSUE AN ORDER TO COMPEL SUBMISSION TO A CHEMICAL TEST
50 BASED ON AN ORAL APPLICATION, THE APPLICANT THEREFOR SHALL PREPARE THE
51 ORDER IN ACCORDANCE WITH THE INSTRUCTIONS OF THE JUDGE OR JUSTICE. IN
52 ALL CASES THE ORDER SHALL INCLUDE THE NAME OF THE ISSUING JUDGE OR
53 JUSTICE, THE NAME OF THE APPLICANT, AND THE DATE AND TIME IT WAS ISSUED.
54 IT MUST BE SIGNED BY THE JUDGE OR JUSTICE IF ISSUED IN PERSON, OR BY THE
55 APPLICANT IF ISSUED ORALLY.

(5) ANY FALSE STATEMENT BY AN APPLICANT OR ANY OTHER PERSON IN SUPPORT OF AN APPLICATION FOR A COURT ORDER SHALL SUBJECT SUCH PERSON TO THE OFFENSES FOR PERJURY SET FORTH IN ARTICLE TWO HUNDRED TEN OF THIS CHAPTER.

(6) THE CHIEF ADMINISTRATOR OF THE COURTS SHALL ESTABLISH A SCHEDULE TO PROVIDE THAT A SUFFICIENT NUMBER OF JUDGES OR JUSTICES WILL BE AVAILABLE IN EACH JUDICIAL DISTRICT TO HEAR ORAL APPLICATIONS FOR COURT ORDERS AS PERMITTED BY THIS SECTION.

(E) ADMINISTRATION OF COMPULSORY CHEMICAL TEST. AN ORDER ISSUED PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION SHALL REQUIRE THAT A CHEMICAL TEST TO DETERMINE THE ALCOHOLIC AND/OR DRUG CONTENT OF THE POSSESSOR'S BLOOD MUST BE ADMINISTERED. THE PROVISIONS OF PARAGRAPHS (A), (B) AND (C) OF SUBDIVISION FOUR OF THIS SECTION SHALL BE APPLICABLE TO ANY CHEMICAL TEST ADMINISTERED PURSUANT TO THIS SECTION.

4. TESTING PROCEDURES. (A) PERSONS AUTHORIZED TO WITHDRAW BLOOD; IMMUNITY; TESTIMONY. (1) AT THE REQUEST OF A POLICE OFFICER, THE FOLLOWING PERSONS MAY WITHDRAW BLOOD FOR THE PURPOSE OF DETERMINING THE ALCOHOLIC AND/OR DRUG CONTENT THEREIN: (A) A PHYSICIAN, A REGISTERED PROFESSIONAL NURSE OR A REGISTERED PHYSICIAN'S ASSISTANT; OR (B) UNDER THE SUPERVISION AND AT THE DIRECTION OF A PHYSICIAN: A MEDICAL LABORATORY TECHNICIAN OR MEDICAL TECHNOLOGIST AS CLASSIFIED BY CIVIL SERVICE; A PHLEBOTOMIST; AN ADVANCED EMERGENCY MEDICAL TECHNICIAN AS CERTIFIED BY THE DEPARTMENT OF HEALTH; OR A MEDICAL LABORATORY TECHNICIAN OR MEDICAL TECHNOLOGIST EMPLOYED BY A CLINICAL LABORATORY APPROVED UNDER TITLE FIVE OF ARTICLE FIVE OF THE PUBLIC HEALTH LAW. THIS LIMITATION SHALL NOT APPLY TO THE TAKING OF A URINE, SALIVA OR BREATH SPECIMEN.

(2) NO PERSON ENTITLED TO WITHDRAW BLOOD PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH OR HOSPITAL EMPLOYING SUCH PERSON, AND NO OTHER EMPLOYER OF SUCH PERSON SHALL BE SUED OR HELD LIABLE FOR ANY ACT DONE OR OMITTED IN THE COURSE OF WITHDRAWING BLOOD AT THE REQUEST OF A POLICE OFFICER PURSUANT TO THIS SECTION.

(3) ANY PERSON WHO MAY HAVE A CAUSE OF ACTION ARISING FROM THE WITHDRAWAL OF BLOOD AS AFORESAID, FOR WHICH NO PERSONAL LIABILITY EXISTS UNDER SUBPARAGRAPH TWO OF THIS PARAGRAPH, MAY MAINTAIN SUCH ACTION AGAINST THE STATE IF ANY PERSON ENTITLED TO WITHDRAW BLOOD PURSUANT TO THIS PARAGRAPH ACTED AT THE REQUEST OF A POLICE OFFICER EMPLOYED BY THE STATE, OR AGAINST THE APPROPRIATE POLITICAL SUBDIVISION OF THE STATE IF SUCH PERSON ACTED AT THE REQUEST OF A POLICE OFFICER EMPLOYED BY A POLITICAL SUBDIVISION OF THE STATE. NO ACTION SHALL BE MAINTAINED PURSUANT TO THIS SUBPARAGRAPH UNLESS NOTICE OF CLAIM IS DULY FILED OR SERVED IN COMPLIANCE WITH LAW.

(4) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS PARAGRAPH AN ACTION MAY BE MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION THEREOF AGAINST A PERSON ENTITLED TO WITHDRAW BLOOD PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH OR HOSPITAL EMPLOYING SUCH PERSON FOR WHOSE ACT OR OMISSION THE STATE OR THE POLITICAL SUBDIVISION HAS BEEN HELD LIABLE UNDER THIS PARAGRAPH TO RECOVER DAMAGES, NOT EXCEEDING THE AMOUNT AWARDED TO THE CLAIMANT, THAT MAY HAVE BEEN SUSTAINED BY THE STATE OR THE POLITICAL SUBDIVISION BY REASON OF GROSS NEGLIGENCE OR BAD FAITH ON THE PART OF SUCH PERSON.

(5) THE TESTIMONY OF ANY PERSON OTHER THAN A PHYSICIAN, ENTITLED TO WITHDRAW BLOOD PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH, IN RESPECT TO ANY SUCH WITHDRAWAL OF BLOOD MADE BY SUCH PERSON MAY BE RECEIVED IN EVIDENCE WITH THE SAME WEIGHT, FORCE AND EFFECT AS IF SUCH WITHDRAWAL OF BLOOD WERE MADE BY A PHYSICIAN.

(6) THE PROVISIONS OF SUBPARAGRAPHS TWO, THREE AND FOUR OF THIS PARAGRAPH SHALL ALSO APPLY WITH REGARD TO ANY PERSON EMPLOYED BY A HOSPITAL AS SECURITY PERSONNEL FOR ANY ACT DONE OR OMITTED IN THE COURSE OF WITHDRAWING BLOOD AT THE REQUEST OF A POLICE OFFICER PURSUANT TO A COURT ORDER IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION.

(B) RIGHT TO ADDITIONAL TEST. THE PERSON TESTED SHALL BE PERMITTED TO CHOOSE A PHYSICIAN TO ADMINISTER A CHEMICAL TEST IN ADDITION TO THE ONE ADMINISTERED AT THE DIRECTION OF THE POLICE OFFICER.

(C) RULES AND REGULATIONS. THE RULES AND REGULATIONS ISSUED BY THE DEPARTMENT OF HEALTH PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FOUR OF SECTION ELEVEN HUNDRED NINETY-FOUR OF THE VEHICLE AND TRAFFIC LAW SHALL ALSO APPLY TO ANALYSES UNDER THIS SECTION. IF THE ANALYSES WERE MADE BY AN INDIVIDUAL POSSESSING A PERMIT ISSUED BY THE DEPARTMENT OF HEALTH, THIS SHALL BE PRESUMPTIVE EVIDENCE THAT THE EXAMINATION WAS PROPERLY GIVEN. THE PROVISIONS OF THIS PARAGRAPH DO NOT PROHIBIT THE INTRODUCTION AS EVIDENCE OF AN ANALYSIS MADE BY AN INDIVIDUAL OTHER THAN A PERSON POSSESSING A PERMIT ISSUED BY THE DEPARTMENT OF HEALTH.

5. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

(A) "LICENSE" MEANS AND INCLUDES LICENSES ISSUED PURSUANT TO SECTION 400.00 OF THIS CHAPTER, AND ANY PERMIT ISSUED BY A COUNTY, CITY, TOWN OR VILLAGE PURSUANT TO A LOCAL LAW, CODE OR ORDINANCE WHICH RESTRICTS THE POSSESSION AND PURCHASE OF RIFLES AND SHOTGUNS.

(B) "LICENSING AUTHORITY" MEANS THE LICENSING OFFICER OR AGENCY WHICH ISSUES A LICENSE.

S 265.50 CHEMICAL TEST EVIDENCE.

1. ADMISSIBILITY. UPON THE TRIAL OF ANY ACTION OR PROCEEDING ARISING OUT OF ACTIONS ALLEGED TO HAVE BEEN COMMITTED BY ANY PERSON ARRESTED FOR A VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE, THE COURT SHALL ADMIT EVIDENCE OF THE AMOUNT OF ALCOHOL OR DRUGS IN THE DEFENDANT'S BLOOD AS SHOWN BY A TEST ADMINISTERED PURSUANT TO THE PROVISIONS OF SECTION 265.45 OF THIS ARTICLE.

2. PROBATIVE VALUE. THE FOLLOWING EFFECT SHALL BE GIVEN TO EVIDENCE OF BLOOD-ALCOHOL CONTENT, AS DETERMINED BY SUCH TESTS, OF A PERSON ARRESTED FOR VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE:

(A) EVIDENCE THAT THERE WAS .05 OF ONE PER CENTUM OR LESS BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD SHALL BE PRIMA FACIE EVIDENCE THAT THE ABILITY OF SUCH PERSON TO SAFELY POSSESS A FIREARM, RIFLE OR SHOTGUN WAS NOT IMPAIRED BY THE CONSUMPTION OF ALCOHOL, AND THAT SUCH PERSON WAS NOT IN AN INTOXICATED CONDITION;

(B) EVIDENCE THAT THERE WAS MORE THAN .05 OF ONE PER CENTUM BUT LESS THAN .07 OF ONE PER CENTUM BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD SHALL BE PRIMA FACIE EVIDENCE THAT SUCH PERSON WAS NOT IN AN INTOXICATED CONDITION, BUT SUCH EVIDENCE SHALL BE RELEVANT EVIDENCE, BUT SHALL NOT BE GIVEN PRIMA FACIE EFFECT, IN DETERMINING WHETHER THE ABILITY OF SUCH PERSON TO SAFELY POSSESS A FIREARM, RIFLE OR SHOTGUN WAS IMPAIRED BY THE CONSUMPTION OF ALCOHOL; AND

(C) EVIDENCE THAT THERE WAS .07 OF ONE PER CENTUM OR MORE BUT LESS THAN .08 OF ONE PER CENTUM BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD SHALL BE PRIMA FACIE EVIDENCE THAT SUCH PERSON WAS NOT IN AN INTOXICATED CONDITION, BUT SUCH EVIDENCE SHALL BE GIVEN PRIMA FACIE EFFECT IN DETERMINING WHETHER THE ABILITY OF SUCH PERSON TO SAFELY POSSESS A FIREARM, RIFLE OR SHOTGUN WAS IMPAIRED BY THE CONSUMPTION OF ALCOHOL.

3. SUPPRESSION. A DEFENDANT WHO HAS BEEN COMPELLED TO SUBMIT TO A CHEMICAL TEST PURSUANT TO THE PROVISIONS OF SUBDIVISION THREE OF SECTION 265.45 OF THIS ARTICLE MAY MOVE FOR THE SUPPRESSION OF SUCH EVIDENCE IN ACCORDANCE WITH ARTICLE SEVEN HUNDRED TEN OF THE CRIMINAL PROCEDURE LAW

1 ON THE GROUNDS THAT THE ORDER WAS OBTAINED AND THE TEST ADMINISTERED IN
2 VIOLATION OF THE PROVISIONS OF SUCH SUBDIVISION OR ANY OTHER APPLICABLE
3 LAW.

4 S 6. Subdivision 11 of section 400.00 of the penal law, as amended by
5 chapter 210 of the laws of 1999, is amended to read as follows:

6 11. License: revocation and suspension. The conviction of a licensee
7 anywhere of a felony or serious offense shall operate as a revocation of
8 the license. A license may be revoked or suspended as provided for in
9 SUBDIVISION TWO OF SECTION 265.45 OF THIS CHAPTER, section 530.14 of the
10 criminal procedure law or section eight hundred forty-two-a of the fami-
11 ly court act. Except for a license issued pursuant to section 400.01 of
12 this article, a license may be revoked and cancelled at any time in the
13 city of New York, and in the counties of Nassau and Suffolk, by the
14 licensing officer, and elsewhere than in the city of New York by any
15 judge or justice of a court of record; a license issued pursuant to
16 section 400.01 of this article may be revoked and cancelled at any time
17 by the licensing officer or any judge or justice of a court of record.
18 The official revoking a license shall give written notice thereof with-
19 out unnecessary delay to the executive department, division of state
20 police, Albany, and shall also notify immediately the duly constituted
21 police authorities of the locality.

22 S 7. This act shall take effect on the one hundred eightieth day after
23 it shall have become a law; provided, however, that any actions, includ-
24 ing but not limited to the promulgation of rules and regulations, neces-
25 sary to implement the provisions of this act on its effective date are
26 authorized and directed to be made and completed on or before such date.