S T A T E O F N E W Y O R K

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:

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

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

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

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

S 2. Section 265.00 of the penal law is amended by adding a new subdivision 24 to read as follows:

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

S 3. Subdivisions 2, 4, 5, 6, 7 and 8 of section 265.01 of the penal law, subdivision 2 as amended by chapter 220 of the laws of 1988, subdivisions 4, 5 and 6 as added by chapter 1041 of the laws of 1974, subdivision 7 as added by chapter 807 of the laws of 1981 and subdivision 8 as added by chapter 646 of the laws of 1986, are amended and a new subdivision 9 is added to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(IV) HIS OR HER ABILITY TO SAFELY POSSESS SUCH FIREARM, RIFLE OR SHOTGUN IS IMPAIRED BY USE OF ANY DRUG; OR

(V) HIS OR HER ABILITY TO SAFELY POSSESS SUCH FIREARM, RIFLE OR SHOTGUN IS IMPAIRED BY THE COMBINED INFLUENCE OF DRUGS OR OF ALCOHOL AND ANY DRUG OR DRUGS.

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

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

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

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

S 265.45 TESTING.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) REASONABLE CAUSE; DEFINITION. FOR THE PURPOSE OF THIS SUBDIVISION "REASONABLE CAUSE" SHALL BE DETERMINED BY VIEWING THE TOTALITY OF CIRCUMSTANCES SURROUNDING THE INCIDENT WHICH, WHEN TAKEN TOGETHER, INDICATE THAT THE PERSON POSSESSED A FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE. SUCH CIRCUMSTANCES MAY INCLUDE, BUT ARE NOT LIMITED TO: EVIDENCE THAT SUCH PERSON WAS BRANDISHING OR USING THE FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY OTHER CRIME AT THE TIME OF THE INCIDENT; ANY VISIBLE INDICATION OF ALCOHOL OR DRUG CONSUMPTION OR IMPAIRMENT BY SUCH PERSON; THE EXISTENCE OF AN OPEN CONTAINER CONTAINING AN ALCOHOLIC BEVERAGE IN OR AROUND THE VICINITY OF SUCH PERSON; ANY OTHER EVIDENCE SURROUNDING THE CIRCUMSTANCES OF THE INCIDENT WHICH INDICATES THAT THE PERSON POSSESSED A FIREARM, RIFLE OR SHOTGUN WHILE

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

(D) COURT ORDER; PROCEDURE. (1) AN APPLICATION FOR A COURT ORDER TO COMPEL SUBMISSION TO A CHEMICAL TEST OR ANY PORTION THEREOF, MAY BE MADE TO ANY SUPREME COURT JUSTICE, COUNTY COURT JUDGE OR DISTRICT COURT JUDGE IN THE JUDICIAL DISTRICT IN WHICH THE INCIDENT OCCURRED, OR IF THE INCIDENT OCCURRED IN THE CITY OF NEW YORK BEFORE ANY SUPREME COURT JUSTICE OR JUDGE OF THE CRIMINAL COURT OF THE CITY OF NEW YORK. SUCH APPLICATION MAY BE COMMUNICATED BY TELEPHONE, RADIO OR OTHER MEANS OF ELECTRONIC COMMUNICATION, OR IN PERSON.

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

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

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

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

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

11. License: revocation and suspension. The conviction of a licensee anywhere of a felony or serious offense shall operate as a revocation of the license. A license may be revoked or suspended as provided for in SUBDIVISION TWO OF SECTION 265.45 OF THIS CHAPTER, section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act. Except for a license issued pursuant to section 400.01 of this article, a license may be revoked and cancelled at any time in the city of New York, and in the counties of Nassau and Suffolk, by the licensing officer, and elsewhere than in the city of New York by any judge or justice of a court of record; a license issued pursuant to section 400.01 of this article may be revoked and cancelled at any time by the licensing officer or any judge or justice of a court of record. The official revoking a license shall give written notice thereof without unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality.

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