

3587

2013-2014 Regular Sessions

I N S E N A T E

February 7, 2013

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

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

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

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

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

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

10 (B) SUBDIVISION 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 25 to read as follows:

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

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 Subdivision 3 of section 265.01 of the penal law is REPEALED.

17 S 4. Subdivisions 2, 4, 5, 6, 7 and 8 of section 265.01 of the penal  
18 law, as amended by chapter 1 of the laws of 2013, are amended and a new  
19 subdivision 9 is added to read as follows:

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

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

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

LBD03919-02-3

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

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

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

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

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

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

23 (II) HE OR SHE HAS .08 OF ONE PER CENTUM OR MORE BY WEIGHT OF ALCOHOL  
24 IN THE PERSON'S BLOOD AS SHOWN BY CHEMICAL ANALYSIS OF SUCH PERSON'S  
25 BLOOD, BREATH, URINE OR SALIVA, MADE PURSUANT TO SECTION 265.50 OF THIS  
26 ARTICLE; OR

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

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

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

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

39 S 5. Paragraphs 3, 4, 5, 7, 7-a, 7-b, 7-e, 7-f, 8, 9, 9-a, 10, 12, 13  
40 and 13-a of subdivision a of section 265.20 of the penal law, paragraph  
41 3 as amended and paragraph 7-f as added by chapter 1 of the laws of  
42 2013, paragraphs 4, 9 and 10 as amended by chapter 1041 of the laws of  
43 1974, paragraph 5 as amended by chapter 235 of the laws of 2007, para-  
44 graph 7 as amended by chapter 180 of the laws of 1998, paragraphs 7-a  
45 and 7-b as amended by chapter 210 of the laws of 1999, paragraph 7-e as  
46 amended by chapter 281 of the laws of 2006, paragraph 8 as amended by  
47 chapter 61 of the laws of 2010, paragraph 9-a as amended by chapter 608  
48 of the laws of 1984, paragraph 12 as added by chapter 90 of the laws of  
49 1979, paragraph 13 as amended by chapter 150 of the laws of 1988 and  
50 paragraph 13-a as added by chapter 370 of the laws of 1986, are amended  
51 to read as follows:

52 3. Possession of a pistol or revolver by a person to whom a license  
53 therefor has been issued as provided under section 400.00 or 400.01 of  
54 this chapter or possession of a weapon as defined in paragraph (e) or  
55 (f) of subdivision twenty-two of section 265.00 of this article which is  
56 registered pursuant to paragraph (a) of subdivision sixteen-a of section

1 400.00 of this chapter or is included on an amended license issued  
2 pursuant to section 400.00 of this chapter. In the event such license is  
3 revoked, other than because such licensee is no longer permitted to  
4 possess a firearm, rifle or shotgun under federal or state law, informa-  
5 tion sufficient to satisfy the requirements of subdivision sixteen-a of  
6 section 400.00 of this chapter, shall be transmitted by the licensing  
7 officer to the state police, in a form as determined by the superinten-  
8 dent of state police. Such transmission shall constitute a valid regis-  
9 tration under such section. Further provided, notwithstanding any other  
10 section of this title, a failure to register such weapon by an individ-  
11 ual who possesses such weapon before the enactment of the chapter of the  
12 laws of two thousand thirteen which amended this paragraph and may so  
13 lawfully possess it thereafter upon registration, shall only be subject  
14 to punishment pursuant to paragraph (c) of subdivision sixteen-a of  
15 section 400.00 of this chapter; provided, that such a license or regis-  
16 tration shall not preclude a conviction for [the] AN offense defined in  
17 subdivision three OR NINE of section 265.01 of this article or section  
18 265.01-a of this article.

19 4. Possession of a rifle, shotgun or longbow for use while hunting,  
20 trapping or fishing, by a person, not a citizen of the United States,  
21 carrying a valid license issued pursuant to section 11-0713 of the envi-  
22 ronmental conservation law; PROVIDED THAT SUCH POSSESSION IN ACCORDANCE  
23 WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF THE PROVISION  
24 OF OR A CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION NINE OF SECTION  
25 265.01 OF THIS ARTICLE.

26 5. Possession of a rifle or shotgun by a person other than a person  
27 who has been convicted of a class A-I felony or a violent felony  
28 offense, as defined in subdivision one of section 70.02 of this chapter,  
29 who has been convicted as specified in subdivision four of section  
30 265.01 OF THIS ARTICLE to whom a certificate of good conduct has been  
31 issued pursuant to section seven hundred three-b of the correction law;  
32 PROVIDED THAT SUCH POSSESSION IN ACCORDANCE WITH THIS PARAGRAPH SHALL  
33 NOT PRECLUDE THE APPLICATION OF THE PROVISION OF OR A CONVICTION OF THE  
34 OFFENSE DEFINED IN SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE.

35 7. Possession, at an indoor or outdoor shooting range for the purpose  
36 of loading and firing, of a rifle or shotgun, the propelling force of  
37 which is gunpowder by a person under sixteen years of age but not under  
38 twelve, under the immediate supervision, guidance and instruction of (a)  
39 a duly commissioned officer of the United States army, navy, air force,  
40 marine corps or coast guard, or of the national guard of the state of  
41 New York; or (b) a duly qualified adult citizen of the United States who  
42 has been granted a certificate as an instructor in small arms practice  
43 issued by the United States army, navy, air force or marine corps, or by  
44 the adjutant general of this state, or by the national rifle association  
45 of America, a not-for-profit corporation duly organized under the laws  
46 of this state; or (c) a parent, guardian, or a person over the age of  
47 eighteen designated in writing by such parent or guardian who shall have  
48 a certificate of qualification in responsible hunting, including safety,  
49 ethics, and landowner relations-hunter relations, issued or honored by  
50 the department of environmental conservation; or (d) an agent of the  
51 department of environmental conservation appointed to conduct courses in  
52 responsible hunting practices pursuant to article eleven of the environ-  
53 mental conservation law; PROVIDED THAT SUCH POSSESSION IN ACCORDANCE  
54 WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF THE PROVISIONS  
55 OF OR A CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION NINE OF SECTION  
56 265.01 OF THIS ARTICLE.

1 7-a. Possession and use, at an indoor or outdoor pistol range located  
2 in or on premises owned or occupied by a duly incorporated organization  
3 organized for conservation purposes or to foster proficiency in small  
4 arms or at a target pistol shooting competition under the auspices of or  
5 approved by the national rifle association for the purpose of loading  
6 and firing the same, by a person duly licensed to possess a pistol or  
7 revolver pursuant to section 400.00 or 400.01 of this chapter of a  
8 pistol or revolver duly so licensed to another person who is present at  
9 the time; PROVIDED THAT SUCH POSSESSION AND USE IN ACCORDANCE WITH THIS  
10 PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF THE PROVISIONS OF OR A  
11 CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION NINE OF SECTION 265.01  
12 OF THIS ARTICLE.

13 7-b. Possession and use, at an indoor or outdoor pistol range located  
14 in or on premises owned or occupied by a duly incorporated organization  
15 organized for conservation purposes or to foster proficiency in small  
16 arms or at a target pistol shooting competition under the auspices of or  
17 approved by the national rifle association for the purpose of loading  
18 and firing the same, by a person who has applied for a license to  
19 possess a pistol or revolver and pre-license possession of same pursuant  
20 to section 400.00 or 400.01 of this chapter, who has not been previously  
21 denied a license, been previously convicted of a felony or serious  
22 offense, and who does not appear to be, or pose a threat to be, a danger  
23 to himself or to others, and who has been approved for possession and  
24 use herein in accordance with section 400.00 or 400.01 of this chapter;  
25 provided however, (A) that such possession AND USE shall be of a pistol  
26 or revolver duly licensed to and shall be used under the supervision,  
27 guidance and instruction of, a person specified in paragraph seven of  
28 this subdivision [and provided further that], (B) such possession and  
29 use be within the jurisdiction of the licensing officer with whom the  
30 person has made application therefor or within the jurisdiction of the  
31 superintendent of state police in the case of a retired sworn member of  
32 the division of state police who has made an application pursuant to  
33 section 400.01 of this chapter, AND (C) SUCH POSSESSION AND USE IN  
34 ACCORDANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF THE  
35 PROVISIONS OF OR A CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION NINE  
36 OF SECTION 265.01 OF THIS ARTICLE.

37 7-e. Possession and use of a pistol or revolver, at an indoor or  
38 outdoor pistol range located in or on premises owned or occupied by a  
39 duly incorporated organization organized for conservation purposes or to  
40 foster proficiency in small arms or at a target pistol shooting competi-  
41 tion under the auspices of or approved by an association or organization  
42 described in paragraph [7-a] SEVEN-A of this subdivision for the purpose  
43 of loading and firing the same by a person at least fourteen years of  
44 age but under the age of twenty-one who has not been previously  
45 convicted of a felony or serious offense, and who does not appear to be,  
46 or pose a threat to be, a danger to himself OR HERSELF or to others;  
47 provided however, that such possession shall be of a pistol or revolver  
48 duly licensed to and shall be used under the immediate supervision,  
49 guidance and instruction of, a person specified in paragraph seven of  
50 this subdivision; AND PROVIDED, FURTHER, THAT SUCH POSSESSION AND USE IN  
51 ACCORDANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF THE  
52 PROVISIONS OF OR A CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION NINE  
53 OF SECTION 265.01 OF THIS ARTICLE.

54 7-f. Possession and use of a magazine, belt, feed strip or similar  
55 device, that contains more than seven rounds of ammunition, but that  
56 does not have a capacity of or can readily be restored or converted to

1 accept more than ten rounds of ammunition, at an indoor or outdoor  
2 firing range located in or on premises owned or occupied by a duly  
3 incorporated organization organized for conservation purposes or to  
4 foster proficiency in arms; at an indoor or outdoor firing range for the  
5 purpose of firing a rifle or shotgun; at a collegiate, olympic or target  
6 shooting competition under the auspices of or approved by the national  
7 rifle association; or at an organized match sanctioned by the Interna-  
8 tional Handgun Metallic Silhouette Association; PROVIDED THAT SUCH  
9 POSSESSION AND USE IN ACCORDANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE  
10 THE APPLICATION OF THE PROVISIONS OF OR A CONVICTION OF THE OFFENSE  
11 DEFINED IN SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE.

12 8. The manufacturer of machine-guns, firearm silencers, assault weap-  
13 ons, large capacity ammunition feeding devices, disguised guns, pilum  
14 ballistic knives, switchblade or gravity knives, billies or blackjacks  
15 as merchandise, or as a transferee recipient of the same for repair,  
16 lawful distribution or research and development, and the disposal and  
17 shipment thereof direct to a regularly constituted or appointed state or  
18 municipal police department, sheriff, [policeman] POLICE OFFICER or  
19 other peace officer, or to a state prison, penitentiary, workhouse,  
20 county jail or other institution for the detention of persons convicted  
21 or accused of crime or held as witnesses in criminal cases, or to the  
22 military service of this state or of the United States; or for the  
23 repair and return of the same to the lawful possessor or for research  
24 and development; PROVIDED THAT STATUS AS A MANUFACTURER, OR DISPOSAL AND  
25 SHIPMENT IN ACCORDANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLI-  
26 CATION OF THE PROVISIONS OF OR A CONVICTION OF THE OFFENSE DEFINED IN  
27 SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE.

28 9. The regular and ordinary transport of firearms as merchandise,  
29 provided that the person transporting such firearms, where he OR SHE  
30 knows or has reasonable means of ascertaining what he OR SHE is trans-  
31 porting, notifies in writing the police commissioner, police chief or  
32 other law enforcement officer performing such functions at the place of  
33 delivery, of the name and address of the consignee and the place of  
34 delivery, and withholds delivery to the consignee for such reasonable  
35 period of time designated in writing by such police commissioner, police  
36 chief or other law enforcement officer as such official may deem neces-  
37 sary for investigation as to whether the consignee may lawfully receive  
38 and possess such firearms, PROVIDED, FURTHER, THAT SUCH TRANSPORT IN  
39 ACCORDANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF THE  
40 PROVISIONS OF OR A CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION NINE  
41 OF SECTION 265.01 OF THIS ARTICLE.

42 9-a. a. Except as provided in [subdivision] SUBPARAGRAPH b [hereof] OF  
43 THIS PARAGRAPH, the regular and ordinary transport of pistols or revol-  
44 vers by a manufacturer of firearms to whom a license as a dealer in  
45 firearms has been issued pursuant to section 400.00 of this chapter, or  
46 by an agent or employee of such manufacturer of firearms who is other-  
47 wise duly licensed to carry a pistol or revolver and who is duly author-  
48 ized in writing by such manufacturer of firearms to transport pistols or  
49 revolvers on the date or dates specified, directly between places where  
50 the manufacturer of firearms regularly conducts business provided such  
51 pistols or revolvers are transported unloaded, in a locked opaque  
52 container, PROVIDED THAT STATUS AS A MANUFACTURER, OR DISPOSAL AND SHIP-  
53 MENT IN ACCORDANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICA-  
54 TION OF THE PROVISIONS OF OR A CONVICTION OF THE OFFENSE DEFINED IN  
55 SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE. For purposes of  
56 this [subdivision] PARAGRAPH, places where the manufacturer of firearms

1 regularly conducts business [includes] INCLUDE, but [is] ARE not limited  
2 to places where the manufacturer of firearms regularly or customarily  
3 conducts development or design of pistols or revolvers, or regularly or  
4 customarily conducts tests on pistols or revolvers, or regularly or  
5 customarily participates in the exposition of firearms to the public.

6 b. The transportation of such pistols or revolvers into, out of or  
7 within the city of New York may be done only with the consent of the  
8 police commissioner of the city of New York. To obtain such consent, the  
9 manufacturer must notify the police commissioner in writing of the name  
10 and address of the transporting manufacturer, or agent or employee of  
11 the manufacturer who is authorized in writing by such manufacturer to  
12 transport pistols or revolvers, the number, make and model number of the  
13 firearms to be transported and the place where the manufacturer regular-  
14 ly conducts business within the city of New York and such other informa-  
15 tion as the commissioner may deem necessary. The manufacturer must not  
16 transport such pistols and revolvers between the designated places of  
17 business for such reasonable period of time designated in writing by the  
18 police commissioner as such official may deem necessary for investi-  
19 gation and to give consent. The police commissioner may not unreasonably  
20 withhold his consent.

21 10. Engaging in the business of gunsmith or dealer in firearms by a  
22 person to whom a valid license therefor has been issued pursuant to  
23 section 400.00 OF THIS CHAPTER, PROVIDED THAT ENGAGING IN SUCH BUSINESS  
24 IN ACCORDANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF  
25 THE PROVISIONS OF OR A CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION  
26 NINE OF SECTION 265.01 OF THIS ARTICLE.

27 12. Possession of a pistol or revolver by a person who is a member or  
28 coach of an accredited college or university target pistol team while  
29 transporting the pistol or revolver into or through New York state to  
30 participate in a collegiate, olympic or target pistol shooting competi-  
31 tion under the auspices of or approved by the national rifle associ-  
32 ation, provided such pistol or revolver is unloaded and carried in a  
33 locked carrying case and the ammunition therefor is carried in a sepa-  
34 rate locked container, PROVIDED, FURTHER THAT SUCH POSSESSION IN ACCORD-  
35 ANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF THE  
36 PROVISIONS OF OR A CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION NINE  
37 OF SECTION 265.01 OF THIS ARTICLE.

38 13. Possession of pistols and revolvers by a person who is a nonresi-  
39 dent of this state while attending or traveling to or from, an organized  
40 competitive pistol match or league competition under auspices of, or  
41 approved by, the National Rifle Association and in which he OR SHE is a  
42 competitor, within forty-eight hours of such event or by a person who is  
43 a non-resident of the state while attending or traveling to or from an  
44 organized match sanctioned by the International Handgun Metallic Silhou-  
45 ette Association and in which he OR SHE is a competitor, within forty-  
46 eight hours of such event, provided that (A) he OR SHE has not been  
47 previously convicted of a felony or a crime which, if committed in New  
48 York, would constitute a felony, (B) SUCH POSSESSION IN ACCORDANCE WITH  
49 THIS PARAGRAPH SHALL NOT PRECLUDE THE APPLICATION OF THE PROVISIONS OF  
50 OR A CONVICTION OF THE OFFENSE DEFINED IN SUBDIVISION NINE OF SECTION  
51 260.01 OF THIS ARTICLE, and [further provided] (C) that the pistols or  
52 revolvers are transported unloaded in a locked opaque container together  
53 with a copy of the match program, match schedule or match registration  
54 card. Such documentation shall constitute prima facie evidence of  
55 exemption, [providing] PROVIDED that such person also has in his OR HER  
56 possession a pistol license or firearms registration card issued in

1 accordance with the laws of his OR HER place of residence. For purposes  
2 of this [subdivision] PARAGRAPH, a person licensed in a jurisdiction  
3 which does not authorize such license by a person who has been previous-  
4 ly convicted of a felony shall be presumed to have no prior conviction.  
5 The superintendent of state police shall annually review the laws of  
6 jurisdictions within the United States and Canada with respect to the  
7 applicable requirements for licensing or registration of firearms and  
8 shall publish a list of those jurisdictions which prohibit possession of  
9 a firearm by a person previously convicted of a felony or crimes which  
10 if committed in New York state would constitute a felony.

11 13-a. Except in cities not wholly contained within a single county of  
12 the state, possession of pistols and revolvers by a person who is a  
13 nonresident of this state while attending or traveling to or from, an  
14 organized convention or exhibition for the display of or education about  
15 firearms, which is conducted under auspices of, or approved by, the  
16 National Rifle Association and in which he OR SHE is a registered  
17 participant, within forty-eight hours of such event, provided that (A)  
18 he OR SHE has not been previously convicted of a felony or a crime  
19 which, if committed in New York, would constitute a felony, (B) SUCH  
20 POSSESSION IN ACCORDANCE WITH THIS PARAGRAPH SHALL NOT PRECLUDE THE  
21 APPLICATION OF THE PROVISIONS OF OR A CONVICTION OF THE OFFENSE DEFINED  
22 IN SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE, and [further  
23 provided that] (C) the pistols or revolvers are transported unloaded in  
24 a locked opaque container together with a copy of the convention or  
25 exhibition program, convention or exhibition schedule or convention or  
26 exhibition registration card. Such documentation shall constitute prima  
27 facie evidence of exemption, [providing] PROVIDED that such person also  
28 has in his OR HER possession a pistol license or firearms registration  
29 card issued in accordance with the laws of his OR HER place of resi-  
30 dence. For purposes of this paragraph, a person licensed in a jurisdic-  
31 tion which does not authorize such license by a person who has been  
32 previously convicted of a felony shall be presumed to have no prior  
33 conviction. The superintendent of state police shall annually review the  
34 laws of jurisdictions within the United States and Canada with respect  
35 to the applicable requirements for licensing or registration of firearms  
36 and shall publish a list of those jurisdictions which prohibit  
37 possession of a firearm by a person previously convicted of a felony or  
38 crimes which if committed in New York state would constitute a felony.

39 S 6. The penal law is amended by adding two new sections 265.50 and  
40 265.55 to read as follows:

41 S 265.50 TESTING.

42 1. FIELD TESTING. EVERY PERSON WHO POSSESSES A FIREARM, RIFLE OR SHOT-  
43 GUN WHICH HAS BEEN BRANDISHED, DISPLAYED OUTSIDE A HOLSTER, DISCHARGED  
44 OR OTHERWISE USED (OTHER THAN IN THE PERSON'S HOME, AT AN INDOOR OR  
45 OUTDOOR SHOOTING RANGE, OR IN AN AREA WHERE HUNTING IS PERMITTED WITH  
46 THE WEAPON), OR WHICH IS POSSESSED, DISPLAYED OR DISCHARGED IN VIOLATION  
47 OF ANY PROVISION OF THIS CHAPTER SHALL, AT THE REQUEST OF A POLICE OFFI-  
48 CER, SUBMIT TO A BREATH TEST TO BE ADMINISTERED BY THE POLICE OFFICER,  
49 UNLESS SUCH PERSON DEMONSTRATES TO SUCH POLICE OFFICER'S SATISFACTION  
50 THAT HE OR SHE IS NOT SUBJECT TO THE PROVISIONS OF SUBDIVISION NINE OF  
51 SECTION 265.01 OF THIS ARTICLE. IF SUCH TEST INDICATES THAT SUCH POSSES-  
52 SOR HAS CONSUMED ALCOHOL, THE POLICE OFFICER MAY REQUEST SUCH POSSESSOR  
53 TO SUBMIT TO A CHEMICAL TEST IN THE MANNER SET FORTH IN SUBDIVISION TWO  
54 OF THIS SECTION.

55 2. CHEMICAL TESTS. (A) WHEN AUTHORIZED. ANY PERSON WHO POSSESSES A  
56 FIREARM, RIFLE OR SHOTGUN IN THIS STATE, OTHER THAN IN SUCH PERSON'S

1 HOME, SHALL BE DEEMED TO HAVE GIVEN CONSENT TO A CHEMICAL TEST OF ONE OR  
2 MORE OF THE FOLLOWING: BREATH, BLOOD, URINE, OR SALIVA, FOR THE PURPOSE  
3 OF DETERMINING THE ALCOHOLIC AND/OR DRUG CONTENT OF THE BLOOD PROVIDED  
4 THAT SUCH TEST IS ADMINISTERED BY OR AT THE DIRECTION OF A POLICE OFFI-  
5 CER WITH RESPECT TO A CHEMICAL TEST OF BREATH, URINE OR SALIVA OR, WITH  
6 RESPECT TO A CHEMICAL TEST OF BLOOD, AT THE DIRECTION OF A POLICE OFFI-  
7 CER:

8 (1) HAVING REASONABLE GROUNDS TO BELIEVE SUCH PERSON POSSESSED A  
9 FIREARM, RIFE OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE OF SECTION  
10 265.01 OF THIS ARTICLE AND WITHIN TWO HOURS AFTER SUCH PERSON HAS BEEN  
11 PLACED UNDER ARREST FOR ANY SUCH VIOLATION; OR

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

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

28 (B) REPORT OF REFUSAL. (1) IF: (A) SUCH PERSON HAVING BEEN PLACED  
29 UNDER ARREST; OR (B) AFTER A BREATH TEST INDICATES THE PRESENCE OF ALCO-  
30 HOL IN THE PERSON'S SYSTEM; AND THE PERSON HAVING THEREAFTER BEEN  
31 REQUESTED TO SUBMIT TO SUCH CHEMICAL TEST AND HAVING BEEN INFORMED THAT  
32 ANY LICENSE HELD BY SUCH PERSON TO POSSESS A FIREARM, RIFLE OR SHOTGUN  
33 SHALL BE SUBJECT TO SUSPENSION OR REVOCATION FOR REFUSAL TO SUBMIT TO  
34 SUCH TEST WHETHER OR NOT THE PERSON IS FOUND GUILTY OF THE CHARGE FOR  
35 WHICH SUCH PERSON IS ARRESTED OR DETAINED, THEN IF SUCH PERSON REFUSES  
36 TO SUBMIT TO SUCH CHEMICAL TEST OR ANY PORTION THEREOF, UNLESS A COURT  
37 ORDER HAS BEEN GRANTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION,  
38 THE TEST SHALL NOT BE GIVEN AND A WRITTEN REPORT OF SUCH REFUSAL SHALL  
39 BE IMMEDIATELY MADE BY THE POLICE OFFICER BEFORE WHOM SUCH REFUSAL WAS  
40 MADE. SUCH REPORT MAY BE VERIFIED BY HAVING THE REPORT SWORN TO, OR BY  
41 AFFIXING TO SUCH REPORT A FORM NOTICE THAT FALSE STATEMENTS MADE THEREIN  
42 ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF  
43 THIS CHAPTER AND SUCH FORM NOTICE TOGETHER WITH THE SUBSCRIPTION OF THE  
44 DEPONENT SHALL CONSTITUTE A VERIFICATION OF THE REPORT.

45 (2) THE REPORT OF THE POLICE OFFICER SHALL SET FORTH REASONABLE  
46 GROUNDS TO BELIEVE SUCH ARRESTED PERSON HAD POSSESSED A FIREARM, RIFLE  
47 OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS  
48 ARTICLE, THAT SAID PERSON HAD REFUSED TO SUBMIT TO SUCH CHEMICAL TEST,  
49 AND THAT NO CHEMICAL TEST WAS ADMINISTERED PURSUANT TO THE REQUIREMENTS  
50 OF SUBDIVISION THREE OF THIS SECTION. THE REPORT SHALL BE PRESENTED TO  
51 THE COURT UPON ARRAIGNMENT OF AN ARRESTED PERSON, AND SHALL BE TRANSMIT-  
52 TED BY SUCH COURT TO THE APPROPRIATE LICENSING AUTHORITY WITHIN  
53 FORTY-EIGHT HOURS OF THE ARRAIGNMENT. SUCH TRANSMITTAL SHALL NOT BE  
54 WAIVED EVEN WITH THE CONSENT OF ALL PARTIES.

55 (3) THE LICENSE MAY BE TEMPORARILY SUSPENDED BY SUCH LICENSING AUTHOR-  
56 ITY PENDING THE DETERMINATION OF A HEARING, IN ACCORDANCE WITH THE RULES

1 AND PROCEDURES OF SUCH AUTHORITY, FOR REFUSAL TO SUBMIT TO A TEST IN  
2 EITHER THE CIRCUMSTANCES DESCRIBED IN SUBDIVISION ONE OF THIS SECTION OR  
3 THE CIRCUMSTANCES DESCRIBED IN SUBPARAGRAPH ONE OF THIS PARAGRAPH. ANY  
4 SUCH REFUSAL MAY, AFTER SUCH HEARING OR IF UNCONTESTED, CONSTITUTE  
5 GROUNDS FOR CONTINUED SUSPENSION OR REVOCATION OF SUCH LICENSE IN  
6 ACCORDANCE WITH SUCH RULES AND PROCEDURES.

7 (4) NOTHING IN THIS SECTION SHALL BE DEEMED TO RESTRICT THE DISCRETION  
8 OF ANY LICENSING AUTHORITY OR THE DISCRETION OF ANY JUDGE OR JUSTICE OF  
9 A COURT OF RECORD UNDER SUBDIVISION ELEVEN OF SECTION 400.00 OF THIS  
10 CHAPTER TO SUSPEND OR REVOKE A LICENSE BECAUSE OF AN ALLEGED VIOLATION  
11 OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE, OR FOR ANY OTHER  
12 REASON OTHER THAN REFUSAL TO SUBMIT TO A TEST AS REQUIRED BY THIS SUBDI-  
13 VISION OR SUBDIVISION ONE OF THIS SECTION.

14 (C) REGULATIONS. A LICENSING AUTHORITY OR LAW ENFORCEMENT AGENCY MAY  
15 PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO EFFECTUATE  
16 THE PROVISIONS OF THIS SUBDIVISION AND SUBDIVISION ONE OF THIS SECTION.

17 (D) EVIDENCE. EVIDENCE OF A REFUSAL TO SUBMIT TO SUCH CHEMICAL TEST OR  
18 ANY PORTION THEREOF SHALL BE ADMISSIBLE IN ANY TRIAL, PROCEEDING OR  
19 HEARING BASED UPON AN ALLEGED VIOLATION OF THE PROVISIONS OF SUBDIVISION  
20 NINE OF SECTION 265.01 OF THIS ARTICLE BUT ONLY UPON A SHOWING THAT THE  
21 PERSON WAS GIVEN SUFFICIENT WARNING, IN CLEAR AND UNEQUIVOCAL LANGUAGE,  
22 OF THE EFFECT OF SUCH REFUSAL AND THAT THE PERSON PERSISTED IN THE  
23 REFUSAL. SUCH SHOWING SHALL BE SATISFIED BY SUBMISSION OF A VERIFIED  
24 REPORT OF REFUSAL AS PROVIDED IN SUBPARAGRAPH ONE OF PARAGRAPH (B) OF  
25 SUBDIVISION TWO OF THIS SECTION CONTAINING A STATEMENT THAT SUCH PERSON  
26 WAS INFORMED THAT HIS OR HER LICENSE SHALL BE SUBJECT TO SUSPENSION OR  
27 REVOCATION WHETHER OR NOT THE PERSON IS FOUND GUILTY OF THE CHARGE FOR  
28 WHICH SUCH PERSON IS ARRESTED OR DETAINED IF SUCH PERSON REFUSES TO  
29 SUBMIT TO SUCH TEST.

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

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

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

50 (1) SUCH PERSON POSSESSED A FIREARM, RIFLE OR SHOTGUN WITH WHICH  
51 ANOTHER PERSON WAS KILLED OR SUFFERED PHYSICAL INJURY; AND

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

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

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

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

6 (C) REASONABLE CAUSE; DEFINITION. FOR THE PURPOSE OF THIS SUBDIVISION  
7 "REASONABLE CAUSE" SHALL BE DETERMINED BY VIEWING THE TOTALITY OF  
8 CIRCUMSTANCES SURROUNDING THE INCIDENT WHICH, WHEN TAKEN TOGETHER, INDI-  
9 CATE THAT THE PERSON POSSESSED A FIREARM, RIFLE OR SHOTGUN IN VIOLATION  
10 OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE. SUCH CIRCUM-  
11 STANCES MAY INCLUDE, BUT ARE NOT LIMITED TO: EVIDENCE THAT SUCH PERSON  
12 WAS BRANDISHING OR USING THE FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF  
13 ANY PROVISION OF THIS CHAPTER OR COMMITTING ANY OTHER CRIME AT THE TIME  
14 OF THE INCIDENT; ANY VISIBLE INDICATION OF ALCOHOL OR DRUG CONSUMPTION  
15 OR IMPAIRMENT BY SUCH PERSON; THE EXISTENCE OF AN OPEN CONTAINER  
16 CONTAINING AN ALCOHOLIC BEVERAGE IN OR AROUND THE VICINITY OF SUCH  
17 PERSON; OR ANY OTHER EVIDENCE SURROUNDING THE CIRCUMSTANCES OF THE INCI-  
18 DENT WHICH INDICATES THAT THE PERSON POSSESSED A FIREARM, RIFLE OR SHOT-  
19 GUN WHILE IMPAIRED BY THE CONSUMPTION OF ALCOHOL OR DRUGS OR WAS INTOXI-  
20 CATED AT THE TIME OF THE INCIDENT.

21 (D) COURT ORDER; PROCEDURE. (1) AN APPLICATION FOR A COURT ORDER TO  
22 COMPEL SUBMISSION TO A CHEMICAL TEST OR ANY PORTION THEREOF, MAY BE MADE  
23 TO ANY SUPREME COURT JUSTICE, COUNTY COURT JUDGE OR DISTRICT COURT JUDGE  
24 IN THE JUDICIAL DISTRICT IN WHICH THE INCIDENT OCCURRED, OR IF THE INCI-  
25 DENT OCCURRED IN THE CITY OF NEW YORK BEFORE ANY SUPREME COURT JUSTICE  
26 OR JUDGE OF THE CRIMINAL COURT OF THE CITY OF NEW YORK. SUCH APPLICA-  
27 TION MAY BE COMMUNICATED BY TELEPHONE, RADIO OR OTHER MEANS OF ELECTRON-  
28 IC COMMUNICATION, OR IN PERSON.

29 (2) THE APPLICANT MUST PROVIDE IDENTIFICATION BY NAME AND TITLE AND  
30 MUST STATE THE PURPOSE OF THE COMMUNICATION. UPON BEING ADVISED THAT AN  
31 APPLICATION FOR A COURT ORDER TO COMPEL SUBMISSION TO A CHEMICAL TEST IS  
32 BEING MADE, THE COURT SHALL PLACE UNDER OATH THE APPLICANT AND ANY OTHER  
33 PERSON PROVIDING INFORMATION IN SUPPORT OF THE APPLICATION AS PROVIDED  
34 IN SUBPARAGRAPH THREE OF THIS PARAGRAPH. AFTER BEING SWORN THE APPLICANT  
35 MUST STATE THAT THE PERSON FROM WHOM THE CHEMICAL TEST WAS REQUESTED  
36 POSSESSED A FIREARM, RIFLE OR SHOTGUN WITH WHICH ANOTHER PERSON WAS  
37 KILLED OR PHYSICALLY INJURED AND, BASED UPON THE TOTALITY OF CIRCUM-  
38 STANCES, THERE IS REASONABLE CAUSE TO BELIEVE THAT SUCH PERSON POSSESSED  
39 A FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF SUBDIVISION NINE OF SECTION  
40 265.01 OF THIS ARTICLE OR A BREATH TEST INDICATED THAT ALCOHOL HAD BEEN  
41 CONSUMED BY SUCH PERSON AND, AFTER BEING PLACED UNDER LAWFUL ARREST SUCH  
42 PERSON REFUSED TO SUBMIT TO A CHEMICAL TEST OR ANY PORTION THEREOF, IN  
43 ACCORDANCE WITH THE PROVISIONS OF THIS SECTION OR IS UNABLE TO GIVE  
44 CONSENT TO SUCH A TEST OR ANY PORTION THEREOF. THE APPLICANT MUST MAKE  
45 SPECIFIC ALLEGATIONS OF FACT TO SUPPORT SUCH STATEMENT. ANY OTHER PERSON  
46 PROPERLY IDENTIFIED, MAY PRESENT SWORN ALLEGATIONS OF FACT IN SUPPORT OF  
47 THE APPLICANT'S STATEMENT.

48 (3) UPON BEING ADVISED THAT AN ORAL APPLICATION FOR A COURT ORDER TO  
49 COMPEL A PERSON TO SUBMIT TO A CHEMICAL TEST IS BEING MADE, A JUDGE OR  
50 JUSTICE SHALL PLACE UNDER OATH THE APPLICANT AND ANY OTHER PERSON  
51 PROVIDING INFORMATION IN SUPPORT OF THE APPLICATION. SUCH OATH OR OATHS  
52 AND ALL OF THE REMAINING COMMUNICATION MUST BE RECORDED, EITHER BY MEANS  
53 OF A VOICE RECORDING DEVICE OR VERBATIM STENOGRAPHIC OR VERBATIM LONG-  
54 HAND NOTES. IF A VOICE RECORDING DEVICE IS USED OR A STENOGRAPHIC RECORD  
55 MADE, THE JUDGE MUST HAVE THE RECORD TRANSCRIBED, CERTIFY TO THE ACCURA-  
56 CY OF THE TRANSCRIPTION AND FILE THE ORIGINAL RECORD AND TRANSCRIPTION

1 WITH THE COURT WITHIN SEVENTY-TWO HOURS OF THE ISSUANCE OF THE COURT  
2 ORDER. IF LONGHAND NOTES ARE TAKEN, THE JUDGE SHALL SUBSCRIBE A COPY AND  
3 FILE IT WITH THE COURT WITHIN TWENTY-FOUR HOURS OF THE ISSUANCE OF THE  
4 ORDER.

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

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

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

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

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

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

50 (3) ANY PERSON WHO MAY HAVE A CAUSE OF ACTION ARISING FROM THE WITH-  
51 DRAWAL OF BLOOD AS AFORESAID, FOR WHICH NO PERSONAL LIABILITY EXISTS  
52 UNDER SUBPARAGRAPH TWO OF THIS PARAGRAPH, MAY MAINTAIN SUCH ACTION  
53 AGAINST THE STATE IF ANY PERSON ENTITLED TO WITHDRAW BLOOD PURSUANT TO  
54 THIS PARAGRAPH ACTED AT THE REQUEST OF A POLICE OFFICER EMPLOYED BY THE  
55 STATE, OR AGAINST THE APPROPRIATE POLITICAL SUBDIVISION OF THE STATE IF  
56 SUCH PERSON ACTED AT THE REQUEST OF A POLICE OFFICER EMPLOYED BY A POLI-

1 TICAL SUBDIVISION OF THE STATE. NO ACTION SHALL BE MAINTAINED PURSUANT  
2 TO THIS SUBPARAGRAPH UNLESS NOTICE OF CLAIM IS DULY FILED OR SERVED IN  
3 COMPLIANCE WITH LAW.

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

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

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

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

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

35 5. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

36 (A) "LICENSE" MEANS AND INCLUDES LICENSES ISSUED PURSUANT TO SECTION  
37 400.00 OF THIS CHAPTER, AND ANY PERMIT ISSUED BY A COUNTY, CITY, TOWN OR  
38 VILLAGE PURSUANT TO A LOCAL LAW, CODE OR ORDINANCE WHICH RESTRICTS THE  
39 POSSESSION AND PURCHASE OF RIFLES AND SHOTGUNS.

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

42 S 265.55 CHEMICAL TEST EVIDENCE.

43 1. ADMISSIBILITY. UPON THE TRIAL OF ANY ACTION OR PROCEEDING ARISING  
44 OUT OF ACTIONS ALLEGED TO HAVE BEEN COMMITTED BY ANY PERSON ARRESTED FOR  
45 A VIOLATION OF SUBDIVISION NINE OF SECTION 265.01 OF THIS ARTICLE, THE  
46 COURT SHALL ADMIT EVIDENCE OF THE AMOUNT OF ALCOHOL OR DRUGS IN THE  
47 DEFENDANT'S BLOOD AS SHOWN BY A TEST ADMINISTERED PURSUANT TO THE  
48 PROVISIONS OF SECTION 265.50 OF THIS ARTICLE.

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

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

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

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

14 3. SUPPRESSION. A DEFENDANT WHO HAS BEEN COMPELLED TO SUBMIT TO A  
15 CHEMICAL TEST PURSUANT TO THE PROVISIONS OF SUBDIVISION THREE OF SECTION  
16 265.50 OF THIS ARTICLE MAY MOVE FOR THE SUPPRESSION OF SUCH EVIDENCE IN  
17 ACCORDANCE WITH ARTICLE SEVEN HUNDRED TEN OF THE CRIMINAL PROCEDURE LAW  
18 ON THE GROUNDS THAT THE ORDER WAS OBTAINED AND THE TEST ADMINISTERED IN  
19 VIOLATION OF THE PROVISIONS OF SUCH SUBDIVISION OR ANY OTHER APPLICABLE  
20 LAW.

21 S 7. Paragraph (a) of subdivision 11 of section 400.00 of the penal  
22 law, as amended by chapter 1 of the laws of 2013, is amended to read as  
23 follows:

24 (a) The conviction of a licensee anywhere of a felony or serious  
25 offense or a licensee at any time becoming ineligible to obtain a  
26 license under this section shall operate as a revocation of the license.  
27 A license may be revoked or suspended as provided for in SUBDIVISION TWO  
28 OF SECTION 265.50 OF THIS CHAPTER, section 530.14 of the criminal proce-  
29 dure law or section eight hundred forty-two-a of the family court act.  
30 Except for a license issued pursuant to section 400.01 of this article,  
31 a license may be revoked and cancelled at any time in the city of New  
32 York, and in the counties of Nassau and Suffolk, by the licensing offi-  
33 cer, and elsewhere than in the city of New York by any judge or justice  
34 of a court of record; a license issued pursuant to section 400.01 of  
35 this article may be revoked and cancelled at any time by the licensing  
36 officer or any judge or justice of a court of record. The official  
37 revoking a license shall give written notice thereof without unnecessary  
38 delay to the executive department, division of state police, Albany, and  
39 shall also notify immediately the duly constituted police authorities of  
40 the locality.

41 S 8. This act shall take effect on the one hundred eightieth day after  
42 it shall have become a law, provided however, that if sections 40 and 46  
43 of chapter 1 of the laws of 2013 shall not have taken effect by such  
44 effective date, then sections four and five of this act shall take  
45 effect on the same date and in the same manner as such sections of such  
46 chapter of the laws of 2013, respectively, take effect; provided  
47 further, that the amendments to section 400.00 of the penal law made by  
48 section seven of this act shall take effect on the same date and in the  
49 same manner as section 48 of such chapter of the laws of 2013, takes  
50 effect; provided further, that any actions, including but not limited to  
51 the promulgation of rules and regulations, necessary to implement the  
52 provisions of this act on its effective date are authorized and directed  
53 to be made and completed on or before such date.