STATE OF NEW YORK

7028

2017-2018 Regular Sessions

IN ASSEMBLY

March 29, 2017

Introduced by M. of A. TITONE, ENGLEBRIGHT, M. G. MILLER, GUNTHER, ZEBROWSKI, LAVINE, BRINDISI, SIMOTAS -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, CROUCH, GIGLIO, HAWLEY, HIKIND, JOHNS, MAGEE, McDONOUGH, McKEVITT, McLAUGHLIN, MONTESANO, RA, RAIA, SIMANOWITZ -- 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; 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:

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.

§ 2. Section 265.00 of the penal law is amended by adding a new subdivision 26 to read as follows:

26. "Drug" means any controlled substance listed in section thirty-three hundred six of the public health law.

§ 3. Subdivision 3 of section 265.01 of the penal law is REPEALED.

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

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

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(4) He **or she** possesses a rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, 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

(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 265.50 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.

§ 5. Paragraphs 3, 4, 5, 7, 7-a, 7-b, 7-e, 7-f, 8, 9, 9-a, 10, 12, 13 and 13-a of subdivision a of section 265.20 of the penal law, paragraph 3 as amended and paragraph 7-f as added by chapter 1 of the laws of 2013, paragraph 4 as amended by section 10 of part EE of chapter 55 of the laws of 2014, paragraph 5 as amended by chapter 235 of the laws of 2007, paragraph 7 as amended by chapter 180 of the laws of 1998, paragraph 7-a as amended by chapter 210 of the laws of 1999, paragraph 7-b as amended by chapter 511 of the laws of 2014, paragraph 7-e as amended by chapter 281 of the laws of 2006, paragraph 8 as amended by chapter 61 of the laws of 2010, paragraphs 9 and 10 as amended by chapter 1041 of the laws of 1974, paragraph 9-a as amended by chapter 608 of the laws of 1984, paragraph 12 as added by chapter 90 of the laws of 1979, paragraph 13 as amended by chapter 150 of the laws of 1988 and paragraph 13-a as added by chapter 370 of the laws of 1986, are 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 or possession of a weapon as defined in paragraph (e) or (f) of subdivision twenty-two of section 265.00 of this article which is registered pursuant to paragraph (a) of subdivision sixteen-a of section 400.00 of this chapter or is included on an amended license issued pursuant to section 400.00 of this chapter. In the event such license is revoked, other than because such licensee is no longer permitted to possess a firearm, rifle or shotgun under federal or state law, information sufficient to satisfy the requirements of subdivision sixteen-a of section 400.00 of this chapter, shall be transmitted by the licensing officer to the state police, in a form as determined by the superintendent of state police. Such transmission shall constitute a valid registration under such section. Further provided, notwithstanding any other section of this title, a failure to register such weapon by an individual who possesses such weapon before the enactment of the chapter of the laws of two thousand thirteen which amended this paragraph and may so lawfully possess it thereafter upon registration, shall only be subject to punishment pursuant to paragraph (c) of subdivision sixteen-a of section 400.00 of this chapter; provided, that such a license or registration shall not preclude a conviction for [~~the~~] **an** offense defined in subdivision [~~three~~] **nine** of section 265.01 of this article or section 265.01-a of this article.

4. Possession of a rifle, shotgun, crossbow or longbow for use while hunting, trapping or fishing, by a person, not a citizen of the United States, carrying a valid license issued pursuant to section 11-0713 of the environmental conservation law**; provided that such possession in accordance with this paragraph shall not preclude the application of the provision of or a conviction of the offense defined in subdivision nine of section 265.01 of this article**.

5. Possession of a rifle or shotgun by a person other than a person who has been convicted of a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of this chapter, who has been convicted as specified in subdivision four of section 265.01 **of this article** to whom a certificate of good conduct has been issued pursuant to section seven hundred three-b of the correction law**; provided that such possession in accordance with this paragraph shall not preclude the application of the provision of or a conviction of the offense defined in subdivision nine of section 265.01 of this article**.

7. Possession, at an indoor or outdoor shooting range for the purpose of loading and firing, of a rifle or shotgun, the propelling force of which is gunpowder by a person under sixteen years of age but not under twelve, under the immediate supervision, guidance and instruction of (a) a duly commissioned officer of the United States army, navy, air force, marine corps or coast guard, or of the national guard of the state of New York; or (b) a duly qualified adult citizen of the United States who has been granted a certificate as an instructor in small arms practice issued by the United States army, navy, air force or marine corps, or by the adjutant general of this state, or by the national rifle association of America, a not-for-profit corporation duly organized under the laws of this state; or (c) a parent, guardian, or a person over the age of eighteen designated in writing by such parent or guardian who shall have a certificate of qualification in responsible hunting, including safety, ethics, and landowner relations-hunter relations, issued or honored by the department of environmental conservation; or (d) an agent of the department of environmental conservation appointed to conduct courses in

responsible hunting practices pursuant to article eleven of the environmental conservation law**; provided that such possession in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article**.

7-a. Possession and use, at an indoor or outdoor pistol range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in small arms or at a target pistol shooting competition under the auspices of or approved by the national rifle association for the purpose of loading and firing the same, by a person duly licensed to possess a pistol or revolver pursuant to section 400.00 or 400.01 of this chapter of a pistol or revolver duly so licensed to another person who is present at the time**; provided that such possession and use in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article**.

7-b. Possession and use, at an indoor or outdoor pistol range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in small arms or at a target pistol shooting competition under the auspices of or approved by the national rifle association for the purpose of loading and firing the same, by a person who has applied for a license to possess a pistol or revolver and pre-license possession of same pursuant to section 400.00 or 400.01 of this chapter, who has not been previously denied a license, been previously convicted of a felony or serious offense, and who does not appear to be, or pose a threat to be, a danger to himself or to others, and who has been approved for possession and use herein in accordance with section 400.00 or 400.01 of this chapter; provided however, **(a)** that such possession **and use** shall be of a pistol or revolver duly licensed to and shall be used under the supervision, guidance and instruction of, a person specified in paragraph seven of this subdivision [~~and provided further that~~]**, (b)** such possession and use be within the jurisdiction of the licensing officer with whom the person has made application therefor or within the jurisdiction of the superintendent of state police in the case of a retired sworn member of the division of state police who has opted to make an application pursuant to section 400.01 of this chapter**, and (c) such possession and use in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article**.

7-e. Possession and use of a pistol or revolver, at an indoor or outdoor pistol range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in small arms or at a target pistol shooting competition under the auspices of or approved by an association or organization described in paragraph [~~7-a~~] **seven-a** of this subdivision for the purpose of loading and firing the same by a person at least fourteen years of age but under the age of twenty-one who has not been previously convicted of a felony or serious offense, and who does not appear to be, or pose a threat to be, a danger to himself **or herself** or to others; provided however, that such possession shall be of a pistol or revolver duly licensed to and shall be used under the immediate supervision, guidance and instruction of, a person specified in paragraph seven of this subdivision**; and provided, further, that such possession and use in accordance with this paragraph shall not preclude the application of the**

provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article.

7-f. Possession and use of a magazine, belt, feed strip or similar device, that contains more than seven rounds of ammunition, but that does not have a capacity of or can readily be restored or converted to accept more than ten rounds of ammunition, at an indoor or outdoor firing range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in arms; at an indoor or outdoor firing range for the purpose of firing a rifle or shotgun; at a collegiate, olympic or target shooting competition under the auspices of or approved by the national rifle association; or at an organized match sanctioned by the International Handgun Metallic Silhouette Association; provided that such possession and use in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article.

8. The manufacturer of machine-guns, firearm silencers, assault weapons, large capacity ammunition feeding devices, disguised guns, pilum ballistic knives, switchblade or gravity knives, billies or blackjacks as merchandise, or as a transferee recipient of the same for repair, lawful distribution or research and development, and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, [~~policeman~~] police officer or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States; or for the repair and return of the same to the lawful possessor or for research and development; provided that status as a manufacturer, or disposal and shipment in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article.

9. The regular and ordinary transport of firearms as merchandise, provided that the person transporting such firearms, where he or she knows or has reasonable means of ascertaining what he or she is transporting, notifies in writing the police commissioner, police chief or other law enforcement officer performing such functions at the place of delivery, of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by such police commissioner, police chief or other law enforcement officer as such official may deem necessary for investigation as to whether the consignee may lawfully receive and possess such firearms, provided, further, that such transport in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article.

9-a. a. Except as provided in [~~subdivision~~] subparagraph b [~~hereof~~] of this paragraph, the regular and ordinary transport of pistols or revolvers by a manufacturer of firearms to whom a license as a dealer in firearms has been issued pursuant to section 400.00 of this chapter, or by an agent or employee of such manufacturer of firearms who is otherwise duly licensed to carry a pistol or revolver and who is duly authorized in writing by such manufacturer of firearms to transport pistols or revolvers on the date or dates specified, directly between places where the manufacturer of firearms regularly conducts business provided such pistols or revolvers are transported unloaded, in a locked opaque

container**, provided that status as a manufacturer, or disposal and shipment in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article**. For purposes of this [~~subdivision~~] **paragraph**, places where the manufacturer of firearms regularly conducts business [~~includes~~] **include**, but [~~is~~] **are** not limited to places where the manufacturer of firearms regularly or customarily conducts development or design of pistols or revolvers, or regularly or customarily conducts tests on pistols or revolvers, or regularly or customarily participates in the exposition of firearms to the public.

b. The transportation of such pistols or revolvers into, out of or within the city of New York may be done only with the consent of the police commissioner of the city of New York. To obtain such consent, the manufacturer must notify the police commissioner in writing of the name and address of the transporting manufacturer, or agent or employee of the manufacturer who is authorized in writing by such manufacturer to transport pistols or revolvers, the number, make and model number of the firearms to be transported and the place where the manufacturer regularly conducts business within the city of New York and such other information as the commissioner may deem necessary. The manufacturer must not transport such pistols and revolvers between the designated places of business for such reasonable period of time designated in writing by the police commissioner as such official may deem necessary for investigation and to give consent. The police commissioner may not unreasonably withhold his consent.

10. Engaging in the business of gunsmith or dealer in firearms by a person to whom a valid license therefor has been issued pursuant to section 400.00 **of this chapter, provided that engaging in such business in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article**.

12. Possession of a pistol or revolver by a person who is a member or coach of an accredited college or university target pistol team while transporting the pistol or revolver into or through New York state to participate in a collegiate, olympic or target pistol shooting competition under the auspices of or approved by the national rifle association, provided such pistol or revolver is unloaded and carried in a locked carrying case and the ammunition therefor is carried in a separate locked container**, provided, further that such possession in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article**.

13. Possession of pistols and revolvers by a person who is a nonresident of this state while attending or traveling to or from, an organized competitive pistol match or league competition under auspices of, or approved by, the National Rifle Association and in which he **or she** is a competitor, within forty-eight hours of such event or by a person who is a non-resident of the state while attending or traveling to or from an organized match sanctioned by the International Handgun Metallic Silhouette Association and in which he **or she** is a competitor, within forty-eight hours of such event, provided that **(a)** he **or she** has not been previously convicted of a felony or a crime which, if committed in New York, would constitute a felony, **(b) such possession in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 260.01 of this article,** and [~~further provided~~] **(c)** that the pistols or

revolvers are transported unloaded in a locked opaque container together with a copy of the match program, match schedule or match registration card. Such documentation shall constitute prima facie evidence of exemption, [~~providing~~] **provided** that such person also has in his **or her** possession a pistol license or firearms registration card issued in accordance with the laws of his **or her** place of residence. For purposes of this [~~subdivision~~] **paragraph**, a person licensed in a jurisdiction which does not authorize such license by a person who has been previously convicted of a felony shall be presumed to have no prior conviction. The superintendent of state police shall annually review the laws of jurisdictions within the United States and Canada with respect to the applicable requirements for licensing or registration of firearms and shall publish a list of those jurisdictions which prohibit possession of a firearm by a person previously convicted of a felony or crimes which if committed in New York state would constitute a felony.

13-a. Except in cities not wholly contained within a single county of the state, possession of pistols and revolvers by a person who is a nonresident of this state while attending or traveling to or from, an organized convention or exhibition for the display of or education about firearms, which is conducted under auspices of, or approved by, the National Rifle Association and in which he **or she** is a registered participant, within forty-eight hours of such event, provided that **(a)** he **or she** has not been previously convicted of a felony or a crime which, if committed in New York, would constitute a felony, **(b) such possession in accordance with this paragraph shall not preclude the application of the provisions of or a conviction of the offense defined in subdivision nine of section 265.01 of this article,** and [~~further provided that~~] **(c)** the pistols or revolvers are transported unloaded in a locked opaque container together with a copy of the convention or exhibition program, convention or exhibition schedule or convention or exhibition registration card. Such documentation shall constitute prima facie evidence of exemption, [~~providing~~] **provided** that such person also has in his **or her** possession a pistol license or firearms registration card issued in accordance with the laws of his **or her** place of residence. For purposes of this paragraph, a person licensed in a jurisdiction which does not authorize such license by a person who has been previously convicted of a felony shall be presumed to have no prior conviction. The superintendent of state police shall annually review the laws of jurisdictions within the United States and Canada with respect to the applicable requirements for licensing or registration of firearms and shall publish a list of those jurisdictions which prohibit possession of a firearm by a person previously convicted of a felony or crimes which if committed in New York state would constitute a felony.

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

§ 265.50 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 posses-

sor 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 law enforcement agency 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 the person having thereafter been requested to submit to such chemical test and having been informed that any license held by such person to possess a firearm, rifle or shotgun shall be subject to suspension or revocation for refusal to submit to such test whether or not the person is found guilty of the charge for which such person is arrested or detained, then if such person 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, and shall be transmit-

ted by such court to the appropriate licensing authority within forty-eight hours of the arraignment. Such transmittal shall not be waived even with the consent of all parties.

(3) The license may be temporarily suspended by such licensing authority pending the determination of a hearing, in accordance with the rules and procedures of such authority, for refusal to submit to a test in either the circumstances described in subdivision one of this section or the circumstances described in subparagraph one of this paragraph. Any such refusal may, after such hearing or if uncontested, constitute grounds for continued suspension or revocation of such license in accordance with such rules and procedures.

(4) Nothing in this section shall be deemed to restrict the discretion of any licensing authority or the discretion of any judge or justice of a court of record under subdivision eleven of section 400.00 of this chapter to suspend or revoke a license because of an alleged violation of subdivision nine of section 265.01 of this article, or for any other reason other than refusal to submit to a test as required by this subdivision or subdivision one of this section.

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

(d) 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 an alleged 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. Such showing shall be satisfied by submission of a verified report of refusal as provided in subparagraph one of paragraph (b) of this subdivision containing a statement that such person was informed that his or her license shall be subject to suspension or revocation whether or not the person is found guilty of the charge for which such person is arrested or detained if such person refuses to submit to such test.

(e) 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 physical injury; 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 chapter or committing 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; or 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 physically 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 or a breath test indicated that alcohol had been consumed by such person 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 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.

§ 265.55 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 265.50 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 265.50 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.

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

(a) The conviction of a licensee anywhere of a felony or serious offense or a licensee at any time becoming ineligible to obtain a license under this section shall operate as a revocation of the license. A license may be revoked or suspended as provided for in subdivision two of section 265.50 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.

§ 8. 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.