

# 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:

- 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 § 2. Section 265.00 of the penal law is amended by adding a new subdi-  
13 vision 26 to read as follows:  
14 26. "Drug" means any controlled substance listed in section thirty-  
15 three hundred six of the public health law.  
16 § 3. Subdivision 3 of section 265.01 of the penal law is REPEALED.  
17 § 4. Subdivisions 4, 5, 6, 7 and 8 of section 265.01 of the penal law,  
18 as amended by chapter 1 of the laws of 2013, are amended and a new  
19 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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1 (4) He or she possesses a rifle, shotgun, antique firearm, black  
2 powder rifle, black powder shotgun, or any muzzle-loading firearm, and  
3 has been convicted of a felony or serious offense; or

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

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16 been rescinded by the director or physician in charge, or other disposi-  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

19 (7) He or she knowingly possesses a bullet containing an explosive  
20 substance designed to detonate upon impact[-]; or

21 (8) He or she possesses any armor piercing ammunition with intent to  
22 use the same unlawfully against another[-]; or

23 (9) (a) He or she possesses a firearm, rifle or shotgun outside of his  
24 or her home while:

25 (i) he or she is in an intoxicated condition; or

26 (ii) he or she has .08 of one per centum or more by weight of alcohol  
27 in the person's blood as shown by chemical analysis of such person's  
28 blood, breath, urine or saliva, made pursuant to section 265.50 of this  
29 article; or

30 (iii) his or her ability to safely possess such firearm, rifle or  
31 shotgun is impaired by consumption of alcohol; or

32 (iv) his or her ability to safely possess such firearm, rifle or shot-  
33 gun is impaired by use of any drug; or

34 (v) his or her ability to safely possess such firearm, rifle or shot-  
35 gun is impaired by the combined influence of drugs or of alcohol and any  
36 drug or drugs.

37 (b) A person may be convicted of a violation of subparagraph (i), (ii)  
38 or (iii) of paragraph (a) of this subdivision, notwithstanding that the  
39 charge laid before the court alleged a violation of subparagraph (i) or  
40 (ii) of paragraph (a) of this subdivision, and regardless of whether or  
41 not such conviction is based on a plea of guilty.

42 § 5. Paragraphs 3, 4, 5, 7, 7-a, 7-b, 7-e, 7-f, 8, 9, 9-a, 10, 12, 13  
43 and 13-a of subdivision a of section 265.20 of the penal law, paragraph  
44 3 as amended and paragraph 7-f as added by chapter 1 of the laws of  
45 2013, paragraph 4 as amended by section 10 of part EE of chapter 55 of  
46 the laws of 2014, paragraph 5 as amended by chapter 235 of the laws of  
47 2007, paragraph 7 as amended by chapter 180 of the laws of 1998, para-  
48 graph 7-a as amended by chapter 210 of the laws of 1999, paragraph 7-b  
49 as amended by chapter 511 of the laws of 2014, paragraph 7-e as amended  
50 by chapter 281 of the laws of 2006, paragraph 8 as amended by chapter 61  
51 of the laws of 2010, paragraphs 9 and 10 as amended by chapter 1041 of  
52 the laws of 1974, paragraph 9-a as amended by chapter 608 of the laws of  
53 1984, paragraph 12 as added by chapter 90 of the laws of 1979, paragraph  
54 13 as amended by chapter 150 of the laws of 1988 and paragraph 13-a as  
55 added by chapter 370 of the laws of 1986, are amended to read as  
56 follows:

1 3. Possession of a pistol or revolver by a person to whom a license  
2 therefor has been issued as provided under section 400.00 or 400.01 of  
3 this chapter or possession of a weapon as defined in paragraph (e) or  
4 (f) of subdivision twenty-two of section 265.00 of this article which is  
5 registered pursuant to paragraph (a) of subdivision sixteen-a of section  
6 400.00 of this chapter or is included on an amended license issued  
7 pursuant to section 400.00 of this chapter. In the event such license is  
8 revoked, other than because such licensee is no longer permitted to  
9 possess a firearm, rifle or shotgun under federal or state law, informa-  
10 tion sufficient to satisfy the requirements of subdivision sixteen-a of  
11 section 400.00 of this chapter, shall be transmitted by the licensing  
12 officer to the state police, in a form as determined by the superinten-  
13 dent of state police. Such transmission shall constitute a valid regis-  
14 tration under such section. Further provided, notwithstanding any other  
15 section of this title, a failure to register such weapon by an individ-  
16 ual who possesses such weapon before the enactment of the chapter of the  
17 laws of two thousand thirteen which amended this paragraph and may so  
18 lawfully possess it thereafter upon registration, shall only be subject  
19 to punishment pursuant to paragraph (c) of subdivision sixteen-a of  
20 section 400.00 of this chapter; provided, that such a license or regis-  
21 tration shall not preclude a conviction for [~~the~~] an offense defined in  
22 subdivision [~~three~~] nine of section 265.01 of this article or section  
23 265.01-a of this article.

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

31 5. Possession of a rifle or shotgun by a person other than a person  
32 who has been convicted of a class A-I felony or a violent felony  
33 offense, as defined in subdivision one of section 70.02 of this chapter,  
34 who has been convicted as specified in subdivision four of section  
35 265.01 of this article to whom a certificate of good conduct has been  
36 issued pursuant to section seven hundred three-b of the correction law;  
37 provided that such possession in accordance with this paragraph shall  
38 not preclude the application of the provision of or a conviction of the  
39 offense defined in subdivision nine of section 265.01 of this article.

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

1 responsible hunting practices pursuant to article eleven of the environ-  
2 mental conservation law; provided that such possession in accordance  
3 with this paragraph shall not preclude the application of the provisions  
4 of or a conviction of the offense defined in subdivision nine of section  
5 265.01 of this article.

6 7-a. Possession and use, at an indoor or outdoor pistol range located  
7 in or on premises owned or occupied by a duly incorporated organization  
8 organized for conservation purposes or to foster proficiency in small  
9 arms or at a target pistol shooting competition under the auspices of or  
10 approved by the national rifle association for the purpose of loading  
11 and firing the same, by a person duly licensed to possess a pistol or  
12 revolver pursuant to section 400.00 or 400.01 of this chapter of a  
13 pistol or revolver duly so licensed to another person who is present at  
14 the time; provided that such possession and use in accordance with this  
15 paragraph shall not preclude the application of the provisions of or a  
16 conviction of the offense defined in subdivision nine of section 265.01  
17 of this article.

18 7-b. Possession and use, at an indoor or outdoor pistol range located  
19 in or on premises owned or occupied by a duly incorporated organization  
20 organized for conservation purposes or to foster proficiency in small  
21 arms or at a target pistol shooting competition under the auspices of or  
22 approved by the national rifle association for the purpose of loading  
23 and firing the same, by a person who has applied for a license to  
24 possess a pistol or revolver and pre-license possession of same pursuant  
25 to section 400.00 or 400.01 of this chapter, who has not been previously  
26 denied a license, been previously convicted of a felony or serious  
27 offense, and who does not appear to be, or pose a threat to be, a danger  
28 to himself or to others, and who has been approved for possession and  
29 use herein in accordance with section 400.00 or 400.01 of this chapter;  
30 provided however, (a) that such possession and use shall be of a pistol  
31 or revolver duly licensed to and shall be used under the supervision,  
32 guidance and instruction of, a person specified in paragraph seven of  
33 this subdivision [~~and provided further that~~], (b) such possession and  
34 use be within the jurisdiction of the licensing officer with whom the  
35 person has made application therefor or within the jurisdiction of the  
36 superintendent of state police in the case of a retired sworn member of  
37 the division of state police who has opted to make an application pursu-  
38 ant to section 400.01 of this chapter, and (c) such possession and use  
39 in accordance with this paragraph shall not preclude the application of  
40 the provisions of or a conviction of the offense defined in subdivision  
41 nine of section 265.01 of this article.

42 7-e. Possession and use of a pistol or revolver, at an indoor or  
43 outdoor pistol range located in or on premises owned or occupied by a  
44 duly incorporated organization organized for conservation purposes or to  
45 foster proficiency in small arms or at a target pistol shooting competi-  
46 tion under the auspices of or approved by an association or organization  
47 described in paragraph [~~7-a~~] seven-a of this subdivision for the purpose  
48 of loading and firing the same by a person at least fourteen years of  
49 age but under the age of twenty-one who has not been previously  
50 convicted of a felony or serious offense, and who does not appear to be,  
51 or pose a threat to be, a danger to himself or herself or to others;  
52 provided however, that such possession shall be of a pistol or revolver  
53 duly licensed to and shall be used under the immediate supervision,  
54 guidance and instruction of, a person specified in paragraph seven of  
55 this subdivision; and provided, further, that such possession and use in  
56 accordance with this paragraph shall not preclude the application of the

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

3 7-f. Possession and use of a magazine, belt, feed strip or similar  
4 device, that contains more than seven rounds of ammunition, but that  
5 does not have a capacity of or can readily be restored or converted to  
6 accept more than ten rounds of ammunition, at an indoor or outdoor  
7 firing range located in or on premises owned or occupied by a duly  
8 incorporated organization organized for conservation purposes or to  
9 foster proficiency in arms; at an indoor or outdoor firing range for the  
10 purpose of firing a rifle or shotgun; at a collegiate, olympic or target  
11 shooting competition under the auspices of or approved by the national  
12 rifle association; or at an organized match sanctioned by the Interna-  
13 tional Handgun Metallic Silhouette Association; provided that such  
14 possession and use in accordance with this paragraph shall not preclude  
15 the application of the provisions of or a conviction of the offense  
16 defined in subdivision nine of section 265.01 of this article.

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

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

47 9-a. a. Except as provided in [~~subdivision~~] subparagraph b [~~hereof~~] of  
48 this paragraph, the regular and ordinary transport of pistols or revol-  
49 vers by a manufacturer of firearms to whom a license as a dealer in  
50 firearms has been issued pursuant to section 400.00 of this chapter, or  
51 by an agent or employee of such manufacturer of firearms who is other-  
52 wise duly licensed to carry a pistol or revolver and who is duly author-  
53 ized in writing by such manufacturer of firearms to transport pistols or  
54 revolvers on the date or dates specified, directly between places where  
55 the manufacturer of firearms regularly conducts business provided such  
56 pistols or revolvers are transported unloaded, in a locked opaque

1 container, provided that status as a manufacturer, or disposal and ship-  
2 ment in accordance with this paragraph shall not preclude the applica-  
3 tion of the provisions of or a conviction of the offense defined in  
4 subdivision nine of section 265.01 of this article. For purposes of  
5 this [~~subdivision~~] paragraph, places where the manufacturer of firearms  
6 regularly conducts business [~~includes~~] include, but [~~is~~] are not limited  
7 to places where the manufacturer of firearms regularly or customarily  
8 conducts development or design of pistols or revolvers, or regularly or  
9 customarily conducts tests on pistols or revolvers, or regularly or  
10 customarily participates in the exposition of firearms to the public.

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

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

32 12. Possession of a pistol or revolver by a person who is a member or  
33 coach of an accredited college or university target pistol team while  
34 transporting the pistol or revolver into or through New York state to  
35 participate in a collegiate, olympic or target pistol shooting competi-  
36 tion under the auspices of or approved by the national rifle associ-  
37 ation, provided such pistol or revolver is unloaded and carried in a  
38 locked carrying case and the ammunition therefor is carried in a sepa-  
39 rate locked container, provided, further that such possession in accord-  
40 ance with this paragraph shall not preclude the application of the  
41 provisions of or a conviction of the offense defined in subdivision nine  
42 of section 265.01 of this article.

43 13. Possession of pistols and revolvers by a person who is a nonresi-  
44 dent of this state while attending or traveling to or from, an organized  
45 competitive pistol match or league competition under auspices of, or  
46 approved by, the National Rifle Association and in which he or she is a  
47 competitor, within forty-eight hours of such event or by a person who is  
48 a non-resident of the state while attending or traveling to or from an  
49 organized match sanctioned by the International Handgun Metallic Silhou-  
50 ette Association and in which he or she is a competitor, within forty-  
51 eight hours of such event, provided that (a) he or she has not been  
52 previously convicted of a felony or a crime which, if committed in New  
53 York, would constitute a felony, (b) such possession in accordance with  
54 this paragraph shall not preclude the application of the provisions of  
55 or a conviction of the offense defined in subdivision nine of section  
56 260.01 of this article, and [~~further provided~~] (c) that the pistols or

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

16 13-a. Except in cities not wholly contained within a single county of  
17 the state, possession of pistols and revolvers by a person who is a  
18 nonresident of this state while attending or traveling to or from, an  
19 organized convention or exhibition for the display of or education about  
20 firearms, which is conducted under auspices of, or approved by, the  
21 National Rifle Association and in which he or she is a registered  
22 participant, within forty-eight hours of such event, provided that (a)  
23 he or she has not been previously convicted of a felony or a crime  
24 which, if committed in New York, would constitute a felony, (b) such  
25 possession in accordance with this paragraph shall not preclude the  
26 application of the provisions of or a conviction of the offense defined  
27 in subdivision nine of section 265.01 of this article, and [~~further~~  
28 ~~provided—that~~] (c) the pistols or revolvers are transported unloaded in  
29 a locked opaque container together with a copy of the convention or  
30 exhibition program, convention or exhibition schedule or convention or  
31 exhibition registration card. Such documentation shall constitute prima  
32 facie evidence of exemption, [~~providing~~] provided that such person also  
33 has in his or her possession a pistol license or firearms registration  
34 card issued in accordance with the laws of his or her place of resi-  
35 dence. For purposes of this paragraph, a person licensed in a jurisdic-  
36 tion which does not authorize such license by a person who has been  
37 previously convicted of a felony shall be presumed to have no prior  
38 conviction. The superintendent of state police shall annually review the  
39 laws of jurisdictions within the United States and Canada with respect  
40 to the applicable requirements for licensing or registration of firearms  
41 and shall publish a list of those jurisdictions which prohibit  
42 possession of a firearm by a person previously convicted of a felony or  
43 crimes which if committed in New York state would constitute a felony.

44 § 6. The penal law is amended by adding two new sections 265.50 and  
45 265.55 to read as follows:

46 § 265.50 Testing.

47 1. Field testing. Every person who possesses a firearm, rifle or shot-  
48 gun which has been brandished, displayed outside a holster, discharged  
49 or otherwise used (other than in the person's home, at an indoor or  
50 outdoor shooting range, or in an area where hunting is permitted with  
51 the weapon), or which is possessed, displayed or discharged in violation  
52 of any provision of this chapter shall, at the request of a police offi-  
53 cer, submit to a breath test to be administered by the police officer,  
54 unless such person demonstrates to such police officer's satisfaction  
55 that he or she is not subject to the provisions of subdivision nine of  
56 section 265.01 of this article. If such test indicates that such posses-

1 sor has consumed alcohol, the police officer may request such possessor  
2 to submit to a chemical test in the manner set forth in subdivision two  
3 of this section.

4 2. Chemical tests. (a) When authorized. Any person who possesses a  
5 firearm, rifle or shotgun in this state, other than in such person's  
6 home, shall be deemed to have given consent to a chemical test of one or  
7 more of the following: breath, blood, urine, or saliva, for the purpose  
8 of determining the alcoholic and/or drug content of the blood provided  
9 that such test is administered by or at the direction of a police offi-  
10 cer with respect to a chemical test of breath, urine or saliva or, with  
11 respect to a chemical test of blood, at the direction of a police offi-  
12 cer:

13 (1) having reasonable grounds to believe such person possessed a  
14 firearm, rifle or shotgun in violation of subdivision nine of section  
15 265.01 of this article and within two hours after such person has been  
16 placed under arrest for any such violation; or

17 (2) within two hours after a breath test, as provided in subdivision  
18 one of this section, indicates that alcohol has been consumed by such  
19 person and in accordance with the rules and regulations established by  
20 the law enforcement agency of which the officer is a member.

21 For the purposes of this paragraph, "reasonable grounds" to believe  
22 that a person possessed a firearm, rifle or shotgun in violation of  
23 subdivision nine of section 265.01 of this article shall be determined  
24 by viewing the totality of circumstances surrounding the incident which,  
25 when taken together, indicate that the possession violated such subdivi-  
26 sion. Such circumstances may include any visible or behavioral indi-  
27 cation of alcohol or drug consumption by such person, the existence of  
28 an open container containing or having contained an alcoholic beverage  
29 in or around the vicinity of such person, or any other evidence  
30 surrounding the circumstances of the incident which indicates that the  
31 person was in possession of a firearm, rifle or shotgun after having  
32 consumed alcohol or drugs at the time of the incident.

33 (b) Report of refusal. (1) If: (A) such person having been placed  
34 under arrest; or (B) after a breath test indicates the presence of alco-  
35 hol in the person's system; and the person having thereafter been  
36 requested to submit to such chemical test and having been informed that  
37 any license held by such person to possess a firearm, rifle or shotgun  
38 shall be subject to suspension or revocation for refusal to submit to  
39 such test whether or not the person is found guilty of the charge for  
40 which such person is arrested or detained, then if such person refuses  
41 to submit to such chemical test or any portion thereof, unless a court  
42 order has been granted pursuant to subdivision three of this section,  
43 the test shall not be given and a written report of such refusal shall  
44 be immediately made by the police officer before whom such refusal was  
45 made. Such report may be verified by having the report sworn to, or by  
46 affixing to such report a form notice that false statements made therein  
47 are punishable as a class A misdemeanor pursuant to section 210.45 of  
48 this chapter and such form notice together with the subscription of the  
49 deponent shall constitute a verification of the report.

50 (2) The report of the police officer shall set forth reasonable  
51 grounds to believe such arrested person had possessed a firearm, rifle  
52 or shotgun in violation of subdivision nine of section 265.01 of this  
53 article, that said person had refused to submit to such chemical test,  
54 and that no chemical test was administered pursuant to the requirements  
55 of subdivision three of this section. The report shall be presented to  
56 the court upon arraignment of an arrested person, and shall be transmit-

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

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

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

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

22 (d) Evidence. Evidence of a refusal to submit to such chemical test or  
23 any portion thereof shall be admissible in any trial, proceeding or  
24 hearing based upon an alleged violation of the provisions of subdivision  
25 nine of section 265.01 of this article but only upon a showing that the  
26 person was given sufficient warning, in clear and unequivocal language,  
27 of the effect of such refusal and that the person persisted in the  
28 refusal. Such showing shall be satisfied by submission of a verified  
29 report of refusal as provided in subparagraph one of paragraph (b) of  
30 this subdivision containing a statement that such person was informed  
31 that his or her license shall be subject to suspension or revocation  
32 whether or not the person is found guilty of the charge for which such  
33 person is arrested or detained if such person refuses to submit to such  
34 test.

35 (e) Results. Upon the request of the person who was tested, the  
36 results of such test shall be made available to such person.

37 3. Compulsory chemical tests. (a) Court ordered chemical tests.  
38 Notwithstanding the provisions of subdivision two of this section, no  
39 person subject to the provisions of subdivision nine of section 265.01  
40 of this article who possesses a firearm, rifle or shotgun (other than in  
41 the person's home, at an indoor or outdoor shooting range, or an area  
42 where hunting is permitted with the weapon) may refuse to submit to a  
43 chemical test of one or more of the following: breath, blood, urine or  
44 saliva, for the purpose of determining the alcoholic and/or drug content  
45 of the blood when a court order for such chemical test has been issued  
46 in accordance with the provisions of this subdivision.

47 (b) When authorized. Upon refusal by any person to submit to a chemi-  
48 cal test or any portion thereof as described in paragraph (a) of this  
49 subdivision, the test shall not be given unless a police officer or a  
50 district attorney, as defined in subdivision thirty-two of section 1.20  
51 of the criminal procedure law, requests and obtains a court order to  
52 compel a person to submit to a chemical test to determine the alcoholic  
53 or drug content of the person's blood upon a finding of reasonable cause  
54 to believe that:

55 (1) such person possessed a firearm, rifle or shotgun with which  
56 another person was killed or suffered physical injury; and

1 (2) (A) either such person possessed the firearm, rifle or shotgun in  
2 violation of subdivision nine of section 265.01 of this article, or

3 (B) a breath test administered by a police officer in accordance with  
4 subdivision one of this section indicates that alcohol has been consumed  
5 by such person; and

6 (3) such person has been placed under lawful arrest; and

7 (4) such person has refused to submit to a chemical test or any  
8 portion thereof, requested in accordance with the provisions of para-  
9 graph (a) of subdivision two of this section or is unable to give  
10 consent to such a test.

11 (c) Reasonable cause; definition. For the purpose of this subdivision  
12 "reasonable cause" shall be determined by viewing the totality of  
13 circumstances surrounding the incident which, when taken together, indi-  
14 cate that the person possessed a firearm, rifle or shotgun in violation  
15 of subdivision nine of section 265.01 of this article. Such circum-  
16 stances may include, but are not limited to: evidence that such person  
17 was brandishing or using the firearm, rifle or shotgun in violation of  
18 any provision of this chapter or committing any other crime at the time  
19 of the incident; any visible indication of alcohol or drug consumption  
20 or impairment by such person; the existence of an open container  
21 containing an alcoholic beverage in or around the vicinity of such  
22 person; or any other evidence surrounding the circumstances of the inci-  
23 dent which indicates that the person possessed a firearm, rifle or shot-  
24 gun while impaired by the consumption of alcohol or drugs or was intoxi-  
25 cated at the time of the incident.

26 (d) Court order; procedure. (1) An application for a court order to  
27 compel submission to a chemical test or any portion thereof, may be made  
28 to any supreme court justice, county court judge or district court judge  
29 in the judicial district in which the incident occurred, or if the inci-  
30 dent occurred in the city of New York before any supreme court justice  
31 or judge of the criminal court of the city of New York. Such applica-  
32 tion may be communicated by telephone, radio or other means of electron-  
33 ic communication, or in person.

34 (2) The applicant must provide identification by name and title and  
35 must state the purpose of the communication. Upon being advised that an  
36 application for a court order to compel submission to a chemical test is  
37 being made, the court shall place under oath the applicant and any other  
38 person providing information in support of the application as provided  
39 in subparagraph three of this paragraph. After being sworn the applicant  
40 must state that the person from whom the chemical test was requested  
41 possessed a firearm, rifle or shotgun with which another person was  
42 killed or physically injured and, based upon the totality of circum-  
43 stances, there is reasonable cause to believe that such person possessed  
44 a firearm, rifle or shotgun in violation of subdivision nine of section  
45 265.01 of this article or a breath test indicated that alcohol had been  
46 consumed by such person and, after being placed under lawful arrest such  
47 person refused to submit to a chemical test or any portion thereof, in  
48 accordance with the provisions of this section or is unable to give  
49 consent to such a test or any portion thereof. The applicant must make  
50 specific allegations of fact to support such statement. Any other person  
51 properly identified, may present sworn allegations of fact in support of  
52 the applicant's statement.

53 (3) Upon being advised that an oral application for a court order to  
54 compel a person to submit to a chemical test is being made, a judge or  
55 justice shall place under oath the applicant and any other person  
56 providing information in support of the application. Such oath or oaths

1 and all of the remaining communication must be recorded, either by means  
2 of a voice recording device or verbatim stenographic or verbatim long-  
3 hand notes. If a voice recording device is used or a stenographic record  
4 made, the judge must have the record transcribed, certify to the accura-  
5 cy of the transcription and file the original record and transcription  
6 with the court within seventy-two hours of the issuance of the court  
7 order. If longhand notes are taken, the judge shall subscribe a copy and  
8 file it with the court within twenty-four hours of the issuance of the  
9 order.

10 (4) If the court is satisfied that the requirements for the issuance  
11 of a court order pursuant to the provisions of paragraph (b) of this  
12 subdivision have been met, it may grant the application and issue an  
13 order requiring the accused to submit to a chemical test to determine  
14 the alcoholic and/or drug content of his or her blood and ordering the  
15 withdrawal of a blood sample in accordance with the provisions of para-  
16 graph (a) of subdivision four of this section. When a judge or justice  
17 determines to issue an order to compel submission to a chemical test  
18 based on an oral application, the applicant therefor shall prepare the  
19 order in accordance with the instructions of the judge or justice. In  
20 all cases the order shall include the name of the issuing judge or  
21 justice, the name of the applicant, and the date and time it was issued.  
22 It must be signed by the judge or justice if issued in person, or by the  
23 applicant if issued orally.

24 (5) Any false statement by an applicant or any other person in support  
25 of an application for a court order shall subject such person to the  
26 offenses for perjury set forth in article two hundred ten of this chap-  
27 ter.

28 (6) The chief administrator of the courts shall establish a schedule  
29 to provide that a sufficient number of judges or justices will be avail-  
30 able in each judicial district to hear oral applications for court  
31 orders as permitted by this section.

32 (e) Administration of compulsory chemical test. An order issued pursu-  
33 ant to the provisions of this subdivision shall require that a chemical  
34 test to determine the alcoholic and/or drug content of the possessor's  
35 blood must be administered. The provisions of paragraphs (a), (b) and  
36 (c) of subdivision four of this section shall be applicable to any chem-  
37 ical test administered pursuant to this section.

38 4. Testing procedures. (a) Persons authorized to withdraw blood; immu-  
39 nity; testimony. (1) At the request of a police officer, the following  
40 persons may withdraw blood for the purpose of determining the alcoholic  
41 and/or drug content therein: (A) a physician, a registered professional  
42 nurse or a registered physician assistant; or (B) under the supervision  
43 and at the direction of a physician: a medical laboratory technician or  
44 medical technologist as classified by civil service; a phlebotomist; an  
45 advanced emergency medical technician as certified by the department of  
46 health; or a medical laboratory technician or medical technologist  
47 employed by a clinical laboratory approved under title five of article  
48 five of the public health law. This limitation shall not apply to the  
49 taking of a urine, saliva or breath specimen.

50 (2) No person entitled to withdraw blood pursuant to subparagraph one  
51 of this paragraph or hospital employing such person, and no other  
52 employer of such person shall be sued or held liable for any act done or  
53 omitted in the course of withdrawing blood at the request of a police  
54 officer pursuant to this section.

55 (3) Any person who may have a cause of action arising from the with-  
56 drawal of blood as aforesaid, for which no personal liability exists

1 under subparagraph two of this paragraph, may maintain such action  
2 against the state if any person entitled to withdraw blood pursuant to  
3 this paragraph acted at the request of a police officer employed by the  
4 state, or against the appropriate political subdivision of the state if  
5 such person acted at the request of a police officer employed by a poli-  
6 tical subdivision of the state. No action shall be maintained pursuant  
7 to this subparagraph unless notice of claim is duly filed or served in  
8 compliance with law.

9 (4) Notwithstanding the foregoing provisions of this paragraph an  
10 action may be maintained by the state or a political subdivision thereof  
11 against a person entitled to withdraw blood pursuant to subparagraph one  
12 of this paragraph or hospital employing such person for whose act or  
13 omission the state or the political subdivision has been held liable  
14 under this paragraph to recover damages, not exceeding the amount  
15 awarded to the claimant, that may have been sustained by the state or  
16 the political subdivision by reason of gross negligence or bad faith on  
17 the part of such person.

18 (5) The testimony of any person other than a physician, entitled to  
19 withdraw blood pursuant to subparagraph one of this paragraph, in  
20 respect to any such withdrawal of blood made by such person may be  
21 received in evidence with the same weight, force and effect as if such  
22 withdrawal of blood were made by a physician.

23 (6) The provisions of subparagraphs two, three and four of this para-  
24 graph shall also apply with regard to any person employed by a hospital  
25 as security personnel for any act done or omitted in the course of with-  
26 drawing blood at the request of a police officer pursuant to a court  
27 order in accordance with subdivision three of this section.

28 (b) Right to additional test. The person tested shall be permitted to  
29 choose a physician to administer a chemical test in addition to the one  
30 administered at the direction of the police officer.

31 (c) Rules and regulations. The rules and regulations issued by the  
32 department of health pursuant to paragraph (c) of subdivision four of  
33 section eleven hundred ninety-four of the vehicle and traffic law shall  
34 also apply to analyses under this section. If the analyses were made by  
35 an individual possessing a permit issued by the department of health,  
36 this shall be presumptive evidence that the examination was properly  
37 given. The provisions of this paragraph do not prohibit the introduction  
38 as evidence of an analysis made by an individual other than a person  
39 possessing a permit issued by the department of health.

40 5. Definitions. For the purposes of this section:

41 (a) "License" means and includes licenses issued pursuant to section  
42 400.00 of this chapter, and any permit issued by a county, city, town or  
43 village pursuant to a local law, code or ordinance which restricts the  
44 possession and purchase of rifles and shotguns.

45 (b) "Licensing authority" means the licensing officer or agency which  
46 issues a license.

47 § 265.55 Chemical test evidence.

48 1. Admissibility. Upon the trial of any action or proceeding arising  
49 out of actions alleged to have been committed by any person arrested for  
50 a violation of subdivision nine of section 265.01 of this article, the  
51 court shall admit evidence of the amount of alcohol or drugs in the  
52 defendant's blood as shown by a test administered pursuant to the  
53 provisions of section 265.50 of this article.

54 2. Probative value. The following effect shall be given to evidence of  
55 blood-alcohol content, as determined by such tests, of a person arrested  
56 for violation of subdivision nine of section 265.01 of this article:

1 (a) Evidence that there was .05 of one per centum or less by weight of  
2 alcohol in such person's blood shall be prima facie evidence that the  
3 ability of such person to safely possess a firearm, rifle or shotgun was  
4 not impaired by the consumption of alcohol, and that such person was not  
5 in an intoxicated condition;

6 (b) Evidence that there was more than .05 of one per centum but less  
7 than .07 of one per centum by weight of alcohol in such person's blood  
8 shall be prima facie evidence that such person was not in an intoxicated  
9 condition, but such evidence shall be relevant evidence, but shall not  
10 be given prima facie effect, in determining whether the ability of such  
11 person to safely possess a firearm, rifle or shotgun was impaired by the  
12 consumption of alcohol; and

13 (c) Evidence that there was .07 of one per centum or more but less  
14 than .08 of one per centum by weight of alcohol in such person's blood  
15 shall be prima facie evidence that such person was not in an intoxicated  
16 condition, but such evidence shall be given prima facie effect in deter-  
17 mining whether the ability of such person to safely possess a firearm,  
18 rifle or shotgun was impaired by the consumption of alcohol.

19 3. Suppression. A defendant who has been compelled to submit to a  
20 chemical test pursuant to the provisions of subdivision three of section  
21 265.50 of this article may move for the suppression of such evidence in  
22 accordance with article seven hundred ten of the criminal procedure law  
23 on the grounds that the order was obtained and the test administered in  
24 violation of the provisions of such subdivision or any other applicable  
25 law.

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

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

46 § 8. This act shall take effect on the one hundred eightieth day after  
47 it shall have become a law. Provided, however, that any actions,  
48 including but not limited to the promulgation of rules and regulations,  
49 necessary to implement the provisions of this act on its effective date  
50 are authorized and directed to be made and completed on or before such  
51 date.