

1 AN ACT relating to driving under the influence and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 189A.010 is amended to read as follows:

- 4 (1) A person shall not operate or be in physical control of a motor vehicle anywhere in
5 this state:
- 6 (a) Having an alcohol concentration of 0.08 or more as measured by a
7 scientifically reliable test or tests of a sample of the person's breath or blood
8 taken within two (2) hours of cessation of operation or physical control of a
9 motor vehicle;
 - 10 (b) While under the influence of alcohol;
 - 11 (c) While under the influence of any other substance or combination of
12 substances which impairs one's driving ability;
 - 13 (d) While the presence of a controlled substance listed in subsection (12) of this
14 section is detected in the blood, as measured by a scientifically reliable test, or
15 tests, taken within two (2) hours of cessation of operation or physical control
16 of a motor vehicle;
 - 17 (e) While under the combined influence of alcohol and any other substance which
18 impairs one's driving ability; or
 - 19 (f) Having an alcohol concentration of 0.02 or more as measured by a
20 scientifically reliable test or tests of a sample of the person's breath or blood
21 taken within two (2) hours of cessation of operation or physical control of a
22 motor vehicle, if the person is under the age of twenty-one (21).
- 23 (2) With the exception of the results of the tests administered pursuant to KRS
24 189A.103(7):
- 25 (a) If the sample of the person's blood or breath that is used to determine the
26 alcohol concentration thereof was obtained more than two (2) hours after
27 cessation of operation or physical control of a motor vehicle, the results of the

1 test or tests shall be inadmissible as evidence in a prosecution under
2 subsection (1)(a) or (f) of this section. The results of the test or tests, however,
3 may be admissible in a prosecution under subsection (1)(b) or (e) of this
4 section; or

5 (b) If the sample of the person's blood that is used to determine the presence of a
6 controlled substance was obtained more than two (2) hours after cessation of
7 operation or physical control of a motor vehicle, the results of the test or tests
8 shall be inadmissible as evidence in a prosecution under subsection (1)(d) of
9 this section. The results of the test or tests, however, may be admissible in a
10 prosecution under subsection (1)(c) or (e) of this section.

11 (3) In any prosecution for a violation of subsection (1)(b) or (e) of this section in which
12 the defendant is charged with having operated or been in physical control of a motor
13 vehicle while under the influence of alcohol, the alcohol concentration in the
14 defendant's blood as determined at the time of making analysis of his blood or
15 breath shall give rise to the following presumptions:

16 (a) If there was an alcohol concentration of less than 0.04 based upon the
17 definition of alcohol concentration in KRS 189A.005, it shall be presumed
18 that the defendant was not under the influence of alcohol; and

19 (b) If there was an alcohol concentration of 0.04 or greater but less than 0.08
20 based upon the definition of alcohol concentration in KRS 189A.005, that fact
21 shall not constitute a presumption that the defendant either was or was not
22 under the influence of alcohol, but that fact may be considered, together with
23 other competent evidence, in determining the guilt or innocence of the
24 defendant.

25 The provisions of this subsection shall not be construed as limiting the introduction
26 of any other competent evidence bearing upon the questions of whether the
27 defendant was under the influence of alcohol or other substances, in any prosecution

1 for a violation of subsection (1)(b) or (e) of this section.

2 (4) (a) Except as provided in paragraph (b) of this subsection, the fact that any person
3 charged with violation of subsection (1) of this section is legally entitled to
4 use any substance, including alcohol, shall not constitute a defense against any
5 charge of violation of subsection (1) of this section.

6 (b) A laboratory test or tests for a controlled substance shall be inadmissible as
7 evidence in a prosecution under subsection (1)(d) of this section upon a
8 finding by the court that the defendant consumed the substance under a valid
9 prescription from a practitioner, as defined in KRS 218A.010, acting in the
10 course of his or her professional practice. However, a laboratory test for a
11 controlled substance may be admissible as evidence in a prosecution under
12 subsection (1)(c) or (e) of this section.

13 (5) Any person who violates the provisions of paragraph (a), (b), (c), (d), or (e) of
14 subsection (1) of this section shall:

15 (a) For the first offense within a ten (10) year period, be fined not less than two
16 hundred dollars (\$200) nor more than five hundred dollars (\$500), or be
17 imprisoned in the county jail for not less than forty-eight (48) hours nor more
18 than thirty (30) days, or both. Following sentencing, the defendant may apply
19 to the judge for permission to enter a community labor program for not less
20 than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or
21 imprisonment, or both. If any of the aggravating circumstances listed in
22 subsection (11) of this section are present while the person was operating or in
23 physical control of a motor vehicle, the mandatory minimum term of
24 imprisonment shall be four (4) days, which term shall not be suspended,
25 probated, conditionally discharged, or subject to any other form of early
26 release;

27 (b) For the second offense within a ten (10) year period, be fined not less than

1 three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500)
2 and shall be imprisoned in the county jail for not less than seven (7) days nor
3 more than six (6) months and, in addition to fine and imprisonment, may be
4 sentenced to community labor for not less than ten (10) days nor more than six
5 (6) months. If any of the aggravating circumstances listed in subsection (11)
6 of this section are present, the mandatory minimum term of imprisonment
7 shall be fourteen (14) days, which term shall not be suspended, probated,
8 conditionally discharged, or subject to any other form of early release;

9 (c) For a third offense within a ten (10) year period, be fined not less than five
10 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall
11 be imprisoned in the county jail for not less than thirty (30) days nor more
12 than twelve (12) months and may, in addition to fine and imprisonment, be
13 sentenced to community labor for not less than thirty (30) days nor more than
14 twelve (12) months. If any of the aggravating circumstances listed in
15 subsection (11) of this section are present, the mandatory minimum term of
16 imprisonment shall be sixty (60) days, which term shall not be suspended,
17 probated, conditionally discharged, or subject to any other form of early
18 release;

19 (d) For a fourth or subsequent offense within a ten (10) year period, be guilty of a
20 Class D felony. If any of the aggravating circumstances listed in subsection
21 (11) of this section are present, the mandatory minimum term of imprisonment
22 shall be two hundred forty (240) days, which term shall not be suspended,
23 probated, conditionally discharged, or subject to any other form of release;
24 and

25 (e) For purposes of this subsection, prior offenses shall include all convictions in
26 this state, and any other state or jurisdiction, for operating or being in control
27 of a motor vehicle while under the influence of alcohol or other substances

1 that impair one's driving ability, or any combination of alcohol and such
2 substances, or while having an unlawful alcohol concentration, or driving
3 while intoxicated, but shall not include convictions for violating subsection
4 (1)(f) of this section. A court shall receive as proof of a prior conviction a
5 copy of that conviction, certified by the court ordering the conviction.

6 (6) Any person who violates the provisions of subsection (1)(f) of this section shall be
7 fined no less than one hundred dollars (\$100) and no more than five hundred dollars
8 (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A
9 person subject to the penalties of this subsection shall not be subject to the penalties
10 established in subsection (5) of this section or any other penalty established
11 pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1) and
12 KRS 189A.070.

13 (7) If the person is under the age of twenty-one (21) and there was an alcohol
14 concentration of 0.08 or greater based on the definition of alcohol concentration in
15 KRS 189A.005, the person shall be subject to the penalties established pursuant to
16 subsection (5) of this section.

17 (8) For a second or third offense within a ten (10) year period, the minimum sentence
18 of imprisonment or community labor shall not be suspended, probated, or subject to
19 conditional discharge or other form of early release. For a fourth or subsequent
20 offense under this section, the minimum term of imprisonment shall be one hundred
21 twenty (120) days, and this term shall not be suspended, probated, or subject to
22 conditional discharge or other form of early release. For a second or subsequent
23 offense, at least forty-eight (48) hours of the mandatory sentence shall be served
24 consecutively.

25 (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of
26 the penalties shall be assessed and that penalty shall not be suspended, probated, or
27 subject to conditional discharge or other form of early release.

- 1 (10) In determining the ten (10) year period under this section, the period shall be
2 measured from the dates on which the offenses occurred for which the judgments of
3 conviction were entered.
- 4 (11) For purposes of this section, aggravating circumstances are any one (1) or more of
5 the following:
- 6 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the
7 speed limit;
 - 8 (b) Operating a motor vehicle in the wrong direction on a limited access highway;
 - 9 (c) Operating a motor vehicle that causes an accident resulting in death or serious
10 physical injury as defined in KRS 500.080;
 - 11 (d) Operating a motor vehicle while the alcohol concentration in the operator's
12 blood or breath is 0.15 or more as measured by a test or tests of a sample of
13 the operator's blood or breath taken within two (2) hours of cessation of
14 operation of the motor vehicle;
 - 15 (e) Refusing to submit to any test or tests of one's ~~blood,~~ breath~~,~~ or urine
16 requested by an officer having reasonable grounds to believe the person was
17 operating or in physical control of a motor vehicle in violation of subsection
18 (1) of this section, except it shall not be considered an aggravating
19 circumstance for a first offense under subsection (5)(a) of this section; and
 - 20 (f) Operating a motor vehicle that is transporting a passenger under the age of
21 twelve (12) years old.
- 22 (12) The substances applicable to a prosecution under subsection (1)(d) of this section
23 are:
- 24 (a) Any Schedule I controlled substance except marijuana;
 - 25 (b) Alprazolam;
 - 26 (c) Amphetamine;
 - 27 (d) Buprenorphine;

- 1 (e) Butalbital;
- 2 (f) Carisoprodol;
- 3 (g) Cocaine;
- 4 (h) Diazepam;
- 5 (i) Hydrocodone;
- 6 (j) Meprobamate;
- 7 (k) Methadone;
- 8 (l) Methamphetamine;
- 9 (m) Oxycodone;
- 10 (n) Promethazine;
- 11 (o) Propoxyphene; and
- 12 (p) Zolpidem.

13 ➔Section 2. KRS 189A.104 is amended to read as follows:

14 (1) The only alcohol or substance testing that is subject to refusal ~~for enhancement of~~
15 ~~penalties~~ provided for in this chapter is:

- 16 (a) Breath analysis testing by an instrument~~[a machine]~~ installed, tested, and
17 maintained by the Commonwealth for that specific purpose at a police station
18 or detention facility;
- 19 (b) Blood or urine testing at the request of the officer at a police station, detention
20 facility, or medical facility; or
- 21 (c) Combination of tests required in paragraphs (a) or (b) of this subsection.

22 (2) **The only alcohol or substance test that is subject to enhancement of penalties for**
23 **refusal provided for in this chapter is:**

24 **(a) Breath analysis by an instrument installed, tested, and maintained by the**
25 **Commonwealth for that specific purpose at a police station or detention**
26 **facility;**

27 **(b) Urine testing at the request of the officer at a police station, detention**

1 facility, or medical facility; or

2 (c) Combination of tests required in paragraphs (a) or (b) of this subsection.

3 **(3)** The results of any breath analysis by an instrument other than one specified in
4 subsections~~[subsection]~~ (1) **and (2)** of this section shall be inadmissible in court.

5 ➔Section 3. KRS 189A.105 is amended to read as follows:

6 (1) A person's refusal to submit to tests under KRS 189A.103 shall result in suspension
7 of his or her driving privilege as provided in this chapter.

8 (2) (a) At the time a breath, blood, or urine test is requested, the person shall be
9 informed:

10 1. That, if the person refuses to submit to a breath or urine test~~[such~~
11 ~~tests]~~:

12 a. The fact of this refusal may be used against him or her in court as
13 evidence of violating KRS 189A.010 and will result in suspension
14 of his or her driver's license by the court at the time of
15 arraignment; and

16 b. If the person is subsequently convicted of violating KRS
17 189A.010(1):

18 i. For a second or third time within a ten (10) year period, he or
19 she will be subject to a mandatory minimum jail sentence
20 which is twice as long as the mandatory minimum jail
21 sentence imposed if he or she submits to the tests; and

22 ii. His or her license will be suspended by the Transportation
23 Cabinet;

24 2. That, if the person refuses to submit to a blood test:

25 a. The fact of this refusal will result in suspension of his or her
26 driver's license by the court at the time of arraignment; and

27 b. If the person is subsequently convicted of violating KRS

1 189A.010(1), his or her license will be suspended by the
2 Transportation Cabinet;

3 3. That, if a test is taken:

4 a. The results of the test may be used against the person in court as
5 evidence of violating KRS 189A.010(1); and

6 b. The person has the right to have a test or tests of his or her blood
7 performed by a person of his or her choosing described in KRS
8 189A.103 within a reasonable time of his or her arrest at the
9 expense of the person arrested; and

10 ~~4.~~~~[3.]~~ That although his or her license will be suspended, he or she may be
11 eligible immediately for an ignition interlock license allowing him or her
12 to drive during the period of suspension and, if he or she is convicted, he
13 or she will receive a credit toward any other ignition interlock
14 requirement arising from this arrest.

15 (b) Nothing in this subsection shall be construed to prohibit a judge of a court of
16 competent jurisdiction from issuing a search warrant or other court order
17 requiring a blood or urine test, or a combination thereof, of a defendant
18 charged with a violation of KRS 189A.010, or other statutory violation arising
19 from the incident~~[, when a person is killed or suffers physical injury, as~~
20 ~~defined in KRS 500.080, as a result of the incident in which the defendant has~~
21 ~~been charged].~~ However, if the incident involves a motor vehicle accident in
22 which there was a fatality, the investigating peace officer shall seek such a
23 search warrant for blood~~[, breath, or urine]~~ testing unless the testing has
24 already been done by consent. If testing done pursuant to a warrant reveals the
25 presence of alcohol or any other substance that impaired the driving ability of
26 a person who is charged and convicted of a violation of KRS 189A.010(1), the
27 sentencing court shall require, in addition to any other sentencing provision,

1 that the defendant make restitution to the state for the cost of the testing.

2 (3) During the period immediately preceding the administration of any test, the person
3 shall be afforded an opportunity of at least ten (10) minutes but not more than
4 fifteen (15) minutes to attempt to contact and communicate with an attorney and
5 shall be informed of this right. Inability to communicate with an attorney during this
6 period shall not be deemed to relieve the person of his obligation to submit to the
7 tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain
8 applicable to the person upon refusal. Nothing in this section shall be deemed to
9 create a right to have an attorney present during the administration of the tests, but
10 the person's attorney may be present if the attorney can physically appear at the
11 location where the test is to be administered within the time period established in
12 this section.

13 (4) Immediately following the administration of the final test requested by the officer,
14 the person shall again be informed of his or her right to have a test or tests of his or
15 her blood performed by a person of his or her choosing described in KRS 189A.103
16 within a reasonable time of his or her arrest at the expense of the person arrested.
17 He or she shall then be asked "Do you want such a test?" The officer shall make
18 reasonable efforts to provide transportation to the tests.

19 ➔Section 4. KRS 189A.107 is amended to read as follows:

20 (1) A person who refuses to submit to an alcohol concentration or substance test
21 requested by an officer having reasonable grounds to believe that the person
22 violated KRS 189A.010(1) shall have his or her driver's license suspended during
23 the pendency of the action as provided in KRS 189A.200.

24 (2) (a) In the event a defendant is not convicted of a violation of KRS 189A.010(1) in
25 a case in which it is alleged that he or she refused to take an alcohol
26 concentration or substance test, upon motion of the attorney for the
27 Commonwealth, the court shall conduct a hearing, without a jury, to

1 determine by clear and convincing evidence if the person actually refused the
2 testing. However, the hearing shall not be required if the court has made a
3 previous determination of the issue at a hearing held under KRS 189A.200
4 and 189A.220.

5 (b) If the court finds that the person did refuse to submit to *a breath, blood, or*
6 *urine test*~~[the testing]~~, the court shall suspend the person's driver's license for
7 the period of time the license would have been suspended upon conviction as
8 set forth in KRS 189A.070(1), except that the court may authorize the person
9 to apply to the Transportation Cabinet for issuance of an ignition interlock
10 license under KRS 189A.340 for the period of the suspension.

11 (c) When the court orders the suspension of a person's license pursuant to this
12 subsection, the person shall surrender the license in the same manner
13 prescribed by KRS 189A.200(4). In addition, notice of the suspension shall be
14 immediately transmitted to the Transportation Cabinet.

15 ➔Section 5. KRS 189A.110 is amended to read as follows:

16 Any person who is arrested for a violation of KRS 189A.010 and who, upon *breath*
17 *analysis testing*~~[blood alcohol testing]~~, shows *an*~~[a blood]~~ alcohol *concentration* reading
18 *of*~~[above]~~ .15 percent *or more* shall be detained in custody at least four (4) hours
19 following his arrest.

20 ➔Section 6. Whereas driving under the influence of alcohol or any substance
21 which impairs one's ability to drive a motor vehicle presents a danger to public safety, an
22 emergency is declared to exist, and this Act takes effect upon its passage and approval by
23 the Governor or upon its otherwise becoming a law.