

1 AN ACT relating to driving under the influence of marijuana.

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

3 ➔Section 1. KRS 189A.005 is amended to read as follows:

4 As used in this chapter, unless the context requires otherwise:

- 5 (1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood  
6 or grams of alcohol per 210 liters of breath;
- 7 (2) "Cabinet" means the Transportation Cabinet;
- 8 (3) "Ignition interlock device" or "device" means a device, certified by the  
9 Transportation Cabinet for use in this Commonwealth under KRS 189A.350, that:
- 10 (a) Connects a motor vehicle ignition system or motorcycle ignition system to a  
11 breath alcohol analyzer and prevents a motor vehicle ignition or motorcycle  
12 ignition from starting, and from continuing to operate, if a driver's breath  
13 alcohol concentration exceeds 0.02, as measured by the device; and
- 14 (b) Has a fully functional camera that is equipped to record the date, time, and  
15 photo of all persons providing breath samples to the device;
- 16 (4) "Ignition interlock certificate of installation" means a certificate providing that the  
17 installed ignition interlock device has been installed and is certified for use in the  
18 Commonwealth under KRS 189A.350;
- 19 (5) "Ignition interlock device provider" or "provider" means any person or company  
20 certified by the Transportation Cabinet to engage in the business of manufacturing,  
21 selling, leasing, servicing, or monitoring ignition interlock devices within the  
22 Commonwealth;
- 23 (6) "Ignition interlock license" means a motor vehicle or motorcycle operator's license  
24 issued or granted by the laws of the Commonwealth of Kentucky that, except for  
25 those with an employer exemption under KRS 189A.340, permits a person to drive  
26 only motor vehicles or motorcycles equipped with a functioning ignition interlock  
27 device;

- 1 (7) "License" means any driver's or operator's license or any other license or permit to  
 2 operate a motor vehicle issued under or granted by the laws of this state including:  
 3 (a) Any temporary license or instruction permit;  
 4 (b) The privilege of any person to obtain a valid license or instruction permit, or  
 5 to drive a motor vehicle whether or not the person holds a valid license; and  
 6 (c) Any nonresident's operating privilege as defined in KRS Chapter 186 or 189;
- 7 (8) "Limited access highway" has the same meaning as "limited access facility" does in  
 8 KRS 177.220;
- 9 (9) **"Marijuana concentration" means nanograms of tetrahydrocannabinol per**  
 10 **milliliter of blood;**
- 11 **(10)** "Refusal" means declining to submit to any test or tests pursuant to KRS 189A.103.  
 12 Declining may be either by word or by the act of refusal. If the breath testing  
 13 instrument for any reason shows an insufficient breath sample and the alcohol  
 14 concentration cannot be measured by the breath testing instrument, the law  
 15 enforcement officer shall then request the defendant to take a blood or urine test in  
 16 lieu of the breath test. If the defendant then declines either by word or by the act of  
 17 refusal, he **or she** shall then be deemed to have refused if the refusal occurs at the  
 18 site at which any alcohol concentration or substance test is to be administered; and
- 19 **(11)**~~(10)~~ When age is a factor, it shall mean age at the time of the commission of the  
 20 offense.
- 21 ➔Section 2. KRS 189A.010 is amended to read as follows:
- 22 (1) A person shall not operate or be in physical control of a motor vehicle anywhere in  
 23 this state:
- 24 (a) Having an alcohol concentration of 0.08 or more as measured by a  
 25 scientifically reliable test or tests of a sample of the person's breath or blood  
 26 taken within two (2) hours of cessation of operation or physical control of a  
 27 motor vehicle;

- 1 (b) While under the influence of alcohol;
- 2 (c) While under the influence of any other substance or combination of  
3 substances which impairs one's driving ability;
- 4 (d) While the presence of a controlled substance listed in subsection (12) of this  
5 section is detected in the blood, as measured by a scientifically reliable test, or  
6 tests, taken within two (2) hours of cessation of operation or physical control  
7 of a motor vehicle;
- 8 (e) While under the combined influence of alcohol and any other substance which  
9 impairs one's driving ability; ~~or~~
- 10 (f) Having an alcohol concentration of 0.02 or more as measured by a  
11 scientifically reliable test or tests of a sample of the person's breath or blood  
12 taken within two (2) hours of cessation of operation or physical control of a  
13 motor vehicle, if the person is under the age of twenty-one (21); or
- 14 (g) Having a marijuana concentration of 5 or more as measured by a  
15 scientifically reliable test or tests of a sample of the person's breath or blood  
16 taken within two (2) hours of cessation of operation or physical control of a  
17 motor vehicle.
- 18 (2) With the exception of the results of the tests administered pursuant to KRS  
19 189A.103(7):
- 20 (a) If the sample of the person's blood or breath that is used to determine the  
21 alcohol concentration thereof was obtained more than two (2) hours after  
22 cessation of operation or physical control of a motor vehicle, the results of the  
23 test or tests shall be inadmissible as evidence in a prosecution under  
24 subsection (1)(a) or (f) of this section. The results of the test or tests, however,  
25 may be admissible in a prosecution under subsection (1)(b) or (e) of this  
26 section; or
- 27 (b) If the sample of the person's blood that is used to determine the presence of a

1 controlled substance was obtained more than two (2) hours after cessation of  
 2 operation or physical control of a motor vehicle, the results of the test or tests  
 3 shall be inadmissible as evidence in a prosecution under subsection (1)(d) of  
 4 this section. The results of the test or tests, however, may be admissible in a  
 5 prosecution under subsection (1)(c) or (e) of this section.

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

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

15 ~~2.~~~~(b)~~ If there was an alcohol concentration of 0.04 or greater but less  
 16 than 0.08 based upon the definition of alcohol concentration in KRS  
 17 189A.005, that fact shall not constitute a presumption that the defendant  
 18 either was or was not under the influence of alcohol, but that fact may  
 19 be considered, together with other competent evidence, in determining  
 20 the guilt or innocence of the defendant.

21 **(b) In any prosecution for a violation of subsection (1)(c) or (e) of this section**  
 22 **in which the defendant is charged with having operated or been in physical**  
 23 **control of a motor vehicle while under the influence of marijuana, the**  
 24 **marijuana concentration in the defendant's blood as determined at the time**  
 25 **of making analysis of his or her blood or breath shall give rise to the**  
 26 **following presumptions:**

27 **1. If there was a marijuana concentration of less than 4 based upon the**

1 definition of marijuana concentration in Section 1 of this Act, it shall  
 2 be presumed that the defendant was not under the influence of  
 3 marijuana; and

4 2. If there was a marijuana concentration of 4 or greater but less than 5  
 5 based upon the definition of marijuana concentration in Section 1 of  
 6 this Act, that fact shall not constitute a presumption that the defendant  
 7 either was or was not under the influence of marijuana, but that fact  
 8 may be considered, together with other competent evidence, in  
 9 determining the guilt or innocence of the defendant.

10 The provisions of this subsection shall not be construed as limiting the introduction  
 11 of any other competent evidence bearing upon the questions of whether the  
 12 defendant was under the influence of alcohol, marijuana, or other substances, in  
 13 any prosecution for a violation of subsection (1)(b), ~~(c)~~ (e), or (g) of this section.

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

18 (b) A laboratory test or tests for a controlled substance shall be inadmissible as  
 19 evidence in a prosecution under subsection (1)(d) of this section upon a  
 20 finding by the court that the defendant consumed the substance under a valid  
 21 prescription from a practitioner, as defined in KRS 218A.010, acting in the  
 22 course of his or her professional practice. However, a laboratory test for a  
 23 controlled substance may be admissible as evidence in a prosecution under  
 24 subsection (1)(c) or (e) of this section.

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

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

1 hundred dollars (\$200) nor more than five hundred dollars (\$500), or be  
2 imprisoned in the county jail for not less than forty-eight (48) hours nor more  
3 than thirty (30) days, or both. Following sentencing, the defendant may apply  
4 to the judge for permission to enter a community labor program for not less  
5 than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or  
6 imprisonment, or both. If any of the aggravating circumstances listed in  
7 subsection (11) of this section are present while the person was operating or in  
8 physical control of a motor vehicle, the mandatory minimum term of  
9 imprisonment shall be four (4) days, which term shall not be suspended,  
10 probated, conditionally discharged, or subject to any other form of early  
11 release;

12 (b) For the second offense within a ten (10) year period, be fined not less than  
13 three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500)  
14 and shall be imprisoned in the county jail for not less than seven (7) days nor  
15 more than six (6) months and, in addition to fine and imprisonment, may be  
16 sentenced to community labor for not less than ten (10) days nor more than  
17 six (6) months. If any of the aggravating circumstances listed in subsection  
18 (11) of this section are present, the mandatory minimum term of  
19 imprisonment shall be fourteen (14) days, which term shall not be suspended,  
20 probated, conditionally discharged, or subject to any other form of early  
21 release;

22 (c) For a third offense within a ten (10) year period, be fined not less than five  
23 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall  
24 be imprisoned in the county jail for not less than thirty (30) days nor more  
25 than twelve (12) months and may, in addition to fine and imprisonment, be  
26 sentenced to community labor for not less than thirty (30) days nor more than  
27 twelve (12) months. If any of the aggravating circumstances listed in

1 subsection (11) of this section are present, the mandatory minimum term of  
2 imprisonment shall be sixty (60) days, which term shall not be suspended,  
3 probated, conditionally discharged, or subject to any other form of early  
4 release;

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

11 (e) For purposes of this subsection, prior offenses shall include all convictions in  
12 this state, and any other state or jurisdiction, for operating or being in control  
13 of a motor vehicle while under the influence of alcohol or other substances  
14 that impair one's driving ability, or any combination of alcohol and such  
15 substances, or while having an unlawful alcohol concentration, or driving  
16 while intoxicated, but shall not include convictions for violating subsection  
17 (1)(f) of this section. A court shall receive as proof of a prior conviction a  
18 copy of that conviction, certified by the court ordering the conviction.

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

26 (7) If the person is under the age of twenty-one (21) and there was an alcohol  
27 concentration of 0.08 or greater based on the definition of alcohol concentration in

1 KRS 189A.005, the person shall be subject to the penalties established pursuant to  
2 subsection (5) of this section.

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

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

14 (10) In determining the ten (10) year period under this section, the period shall be  
15 measured from the dates on which the offenses occurred for which the judgments of  
16 conviction were entered.

17 (11) For purposes of this section, aggravating circumstances are any one (1) or more of  
18 the following:

19 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the  
20 speed limit;

21 (b) Operating a motor vehicle in the wrong direction on a limited access highway;

22 (c) Operating a motor vehicle that causes an accident resulting in death or serious  
23 physical injury as defined in KRS 500.080;

24 (d) Operating a motor vehicle while the alcohol concentration in the operator's  
25 blood or breath is 0.15 or more as measured by a test or tests of a sample of  
26 the operator's blood or breath taken within two (2) hours of cessation of  
27 operation of the motor vehicle;



1 (e) Refusing to submit to any test or tests of one's blood, breath, or urine  
 2 requested by an officer having reasonable grounds to believe the person was  
 3 operating or in physical control of a motor vehicle in violation of subsection  
 4 (1) of this section, except it shall not be considered an aggravating  
 5 circumstance for a first offense under subsection (5)(a) of this section; and

6 (f) Operating a motor vehicle that is transporting a passenger under the age of  
 7 twelve (12) years old.

8 (12) The substances applicable to a prosecution under subsection (1)(d) of this section  
 9 are:

10 (a) Any Schedule I controlled substance except marijuana;

11 (b) Alprazolam;

12 (c) Amphetamine;

13 (d) Buprenorphine;

14 (e) Butalbital;

15 (f) Carisoprodol;

16 (g) Cocaine;

17 (h) Diazepam;

18 (i) Hydrocodone;

19 (j) Meprobamate;

20 (k) Methadone;

21 (l) Methamphetamine;

22 (m) Oxycodone;

23 (n) Promethazine;

24 (o) Propoxyphene; and

25 (p) Zolpidem.

26 ➔Section 3. KRS 189A.050 is amended to read as follows:

27 (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), ~~(e)~~, or

1        (g) shall be sentenced to pay a service fee of four hundred twenty-five dollars  
2        (\$425), which shall be in addition to all other penalties authorized by law.

3        (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS  
4        534.020 and KRS 534.060.

5        (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid  
6        into the general fund, the second fifty dollars (\$50) of each service fee imposed by  
7        this section shall be paid to the ignition interlock administration fund established in  
8        KRS 189A.380, and the remainder of the revenue collected from the service fee  
9        imposed by this section shall be utilized as follows:

10        (a) Twelve percent (12%) shall be transferred to the Department of Kentucky  
11        State Police forensic laboratory for the acquisition, maintenance, testing, and  
12        calibration of alcohol concentration testing instruments and the training of  
13        laboratory personnel to perform these tasks;

14        (b) Twenty percent (20%) shall be allocated to the Department of Public  
15        Advocacy;

16        (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for  
17        training of prosecutors for the prosecution of persons charged with violations  
18        of this chapter and for obtaining expert witnesses in cases involving the  
19        prosecution of persons charged with violations of this chapter or any other  
20        offense in which driving under the influence is a factor in the commission of  
21        the offense charged;

22        (d) Sixteen percent (16%) shall be transferred as follows:

23            1. Fifty percent (50%) shall be credited to the traumatic brain injury trust  
24            fund established under KRS 211.476; and

25            2. Fifty percent (50%) shall be credited to the Cabinet for Health and  
26            Family Services, Department for Behavioral Health, Developmental and  
27            Intellectual Disabilities, for the purposes of providing direct services to

1 individuals with brain injuries that may include long-term supportive  
 2 services and training and consultation to professionals working with  
 3 individuals with brain injuries. As funding becomes available under this  
 4 subparagraph, the cabinet may promulgate administrative regulations  
 5 pursuant to KRS Chapter 13A to implement the services permitted by  
 6 this subparagraph;

7 (e) Any amount specified by a specific statute shall be transferred as provided in  
 8 that statute;

9 (f) Forty-six percent (46%) shall be transferred to be utilized to fund enforcement  
 10 of this chapter and for the support of jails, recordkeeping, treatment, and  
 11 educational programs authorized by this chapter and by the Department of  
 12 Public Advocacy; and

13 (g) The remainder shall be transferred to the general fund.

14 (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be  
 15 placed in trust and agency accounts that shall not lapse.

16 ➔Section 4. KRS 189A.070 is amended to read as follows:

17 (1) (a) 1. Unless the person is under eighteen (18) years of age, in addition to the  
 18 penalties specified in KRS 189A.010, the Transportation Cabinet shall  
 19 suspend a person's license to operate a motor vehicle or motorcycle  
 20 upon conviction of KRS 189A.010(1).

21 2. Upon conviction of KRS 189A.010(1)(a), (b), (c), (d), ~~(e)~~, or (g),  
 22 the Transportation Cabinet shall suspend a person's license to operate a  
 23 motor vehicle or motorcycle as follows:

24 a. For the first offense within a ten (10) year period:

25 i. For a person who is issued an ignition interlock license under  
 26 KRS 189A.340 and who meets the ninety (90) consecutive  
 27 day requirement within the first four (4) months of the

- 1 issuance of the ignition interlock license, four (4) months;
- 2 ii. For a person who is issued an ignition interlock license under
- 3 KRS 189A.340 but does not meet the ninety (90)
- 4 consecutive day requirement within the first four (4) months
- 5 of the issuance of the ignition interlock license, until the
- 6 person meets the ninety (90) consecutive day requirement or
- 7 six (6) months, whichever is shorter; or
- 8 iii. For all others, six (6) months;
- 9 b. For the second offense within a ten (10) year period:
- 10 i. For a person who is issued an ignition interlock license under
- 11 KRS 189A.340 and who meets the one hundred twenty (120)
- 12 consecutive day requirement within the first twelve (12)
- 13 months of the issuance of the ignition interlock license,
- 14 twelve (12) months;
- 15 ii. For a person who is issued an ignition interlock license under
- 16 KRS 189A.340 but does not meet the one hundred twenty
- 17 (120) consecutive day requirement within the first twelve
- 18 (12) months of the issuance of the ignition interlock license,
- 19 until the person meets the one hundred twenty (120)
- 20 consecutive day requirement or eighteen (18) months,
- 21 whichever is shorter; or
- 22 iii. For all others, eighteen (18) months;
- 23 c. For a third offense within a ten (10) year period:
- 24 i. For a person who is issued an ignition interlock license under
- 25 KRS 189A.340 and who meets the one hundred twenty (120)
- 26 consecutive day requirement within the first eighteen (18)
- 27 months of the issuance of the ignition interlock license,

- 1                   eighteen (18) months;
- 2                   ii. For a person who is issued an ignition interlock license under
- 3                   KRS 189A.340 but does not meet the one hundred twenty
- 4                   (120) consecutive day requirement within the first eighteen
- 5                   (18) months of the issuance of the ignition interlock license,
- 6                   until the person meets the one hundred twenty (120)
- 7                   consecutive day requirement or thirty-six (36) months,
- 8                   whichever is shorter; or
- 9                   iii. For all others, thirty-six (36) months;
- 10                  d. For a fourth or subsequent offense within a ten (10) year period:
- 11                  i. For a person who is issued an ignition interlock license under
- 12                  KRS 189A.340 and who meets the one hundred twenty (120)
- 13                  consecutive day requirement within the first thirty (30)
- 14                  months of the issuance of the ignition interlock license, thirty
- 15                  (30) months;
- 16                  ii. For a person who is issued an ignition interlock license under
- 17                  KRS 189A.340 but does not meet the one hundred twenty
- 18                  (120) consecutive day requirement within the first thirty (30)
- 19                  months of the issuance of the ignition interlock license, until
- 20                  the person meets the one hundred twenty (120) consecutive
- 21                  day requirement or sixty (60) months, whichever is shorter;
- 22                  or
- 23                  iii. For all others, sixty (60) months;
- 24                  e. If the conviction records transmitted to the Transportation Cabinet
- 25                  pursuant to subsection (3) of this section show that a person was
- 26                  convicted of a:
- 27                  i. First offense of KRS 189A.010, the person's license shall be

- 1                   suspended as provided in subdivision a. of this subparagraph;
- 2                   ii.   Second offense of KRS 189A.010, the person's license shall
- 3                   be suspended as provided in subdivision b. of this
- 4                   subparagraph;
- 5                   iii.   Third offense of KRS 189A.010, the person's license shall be
- 6                   suspended as provided in subdivision c. of this subparagraph;
- 7                   and
- 8                   iv.   Fourth or subsequent offense of KRS 189A.010, the person's
- 9                   license shall be suspended as provided in subdivision d. of
- 10                  this subparagraph; and

- 11                  f.   The license suspension shall be deemed effective on the date of
- 12                  entry of the court's order or judgement for a conviction of KRS
- 13                  189A.010.

- 14                  3.   Upon conviction of KRS 189A.010(1)(f), the Transportation Cabinet
- 15                  shall suspend a person's license to operate a motor vehicle or motorcycle
- 16                  as follows:

- 17                  a.   For a person who is issued an ignition interlock license under KRS
- 18                  189A.340 and who meets the ninety (90) consecutive day
- 19                  requirement within the first four (4) months of the issuance of the
- 20                  ignition interlock license, four (4) months;

- 21                  b.   For a person who is issued an ignition interlock license under KRS
- 22                  189A.340 but does not meet the ninety (90) consecutive day
- 23                  requirement within the first four (4) months of the issuance of the
- 24                  ignition interlock license, until the person meets the ninety (90)
- 25                  consecutive day requirement or six (6) months, whichever is
- 26                  shorter; or

- 27                  c.   For all others, six (6) months.

- 1           4. For purposes of this paragraph, "ninety (90) consecutive day  
2           requirement" and "one hundred twenty (120) consecutive day  
3           requirement" mean the requirements established in KRS  
4           189A.340(4)(b)2.
- 5           (b) For a person under the age of eighteen (18), in addition to the penalties  
6           specified in KRS 189A.010, the Transportation Cabinet shall suspend the  
7           person's license to operate a motor vehicle or motorcycle upon conviction of  
8           KRS 189A.010(1). The person shall have his or her license suspended until he  
9           or she reaches the age of eighteen (18) or as provided in paragraph (a) of this  
10          subsection, whichever penalty will result in the longer period of suspension.
- 11       (2) In addition to the period of license suspension set forth in subsection (1) of this  
12          section, no person shall be eligible for reinstatement of his or her full privilege to  
13          operate a motor vehicle or motorcycle until he or she has completed the alcohol or  
14          substance abuse education or treatment program ordered pursuant to KRS  
15          189A.040.
- 16       (3) Upon conviction of KRS 189A.010(1):
- 17           (a) A person shall surrender his or her license to operate a motor vehicle or  
18           motorcycle to the court. Should the person fail to surrender his or her license  
19           to the court, the court shall issue an order directing the sheriff or any other  
20           peace officer to seize the license forthwith and deliver it to the court. The  
21           court shall then forward the license to the Transportation Cabinet. This  
22           paragraph shall not apply to a person who has previously surrendered his or  
23           her license pursuant to KRS 189A.200; and
- 24           (b) The court shall immediately transmit the conviction records and other  
25           appropriate information to the Transportation Cabinet. A court shall not waive  
26           or stay this procedure.
- 27       (4) In determining the ten (10) year period under this section, the period shall be

1 measured from the dates on which the offenses occurred for which the judgments of  
 2 conviction were entered.

3 ➔Section 5. KRS 189A.090 is amended to read as follows:

4 (1) No person shall operate or be in physical control of a motor vehicle or motorcycle  
 5 while his or her license is suspended under this chapter, unless the person has a  
 6 valid:

7 (a) Ignition interlock license in the person's possession and:

8 1. The motor vehicle or motorcycle is equipped with a functioning ignition  
 9 interlock device; or

10 2. The person is operating or in physical control of an employer's motor  
 11 vehicle or motorcycle in accordance with KRS 189A.340(6); or

12 (b) Hardship license in the person's possession.

13 (2) In addition to the period of license suspension imposed by KRS 189A.070, any  
 14 person who violates subsection (1) of this section shall:

15 (a) For a first offense within a ten (10) year period, be guilty of a Class B  
 16 misdemeanor and have his or her license suspended by the Transportation  
 17 Cabinet for six (6) months, unless at the time of the offense the person was  
 18 also operating or in physical control of a motor vehicle in violation of KRS  
 19 189A.010(1)(a), (b), (c), (d), ~~(e)~~, **or (g)**, in which event the person shall  
 20 be guilty of a Class A misdemeanor and have his or her license suspended by  
 21 the Transportation Cabinet for a period of one (1) year;

22 (b) For a second offense within a ten (10) year period, be guilty of a Class A  
 23 misdemeanor and have his or her license suspended by the Transportation  
 24 Cabinet for one (1) year, unless at the time of the offense the person was also  
 25 operating or in physical control of a motor vehicle in violation of KRS  
 26 189A.010(1)(a), (b), (c), (d), ~~(e)~~, **or (g)**, in which event the person shall  
 27 be guilty of a Class D felony and have his or her license suspended by the



1           Transportation Cabinet for a period of two (2) years; and  
 2           (c) For a third or subsequent offense within a ten (10) year period, be guilty of a  
 3           Class D felony and have his or her license suspended by the Transportation  
 4           Cabinet for two (2) years, unless at the time of the offense the person was also  
 5           operating or in physical control of a motor vehicle in violation of KRS  
 6           189A.010(1)(a), (b), (c), (d),~~(e)~~, **or (g)**, in which event the person shall  
 7           be guilty of a Class D felony and have his or her license suspended by the  
 8           Transportation Cabinet for a period of five (5) years.

9           (3) Any person who violates subsection (1) of this section may apply for an ignition  
 10          interlock license for the remainder of the original period of suspension under KRS  
 11          189A.070 and for the entire period of the new suspension if the person is and  
 12          remains otherwise eligible for such license pursuant to KRS 189A.340.

13          (4) The ten (10) year period under this section shall be measured in the same manner as  
 14          in KRS 189A.070.

15          ➔Section 6. KRS 189A.240 is amended to read as follows:

16          In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the  
 17          court determines by a preponderance of the evidence that:

18          (1) The person was charged and arrested by a peace officer with a violation of KRS  
 19          189A.010(1)(a), (b), (c), (d),~~(e)~~, **or (g)**;

20          (2) The peace officer had reasonable grounds to believe that the person was operating a  
 21          motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d),~~(e)~~, **or (g)**;

22          (3) There is probable cause to believe that the person committed the violation of KRS  
 23          189A.010(1)(a), (b), (c), (d),~~(e)~~, **or (g)** as charged; and

24          (4) The person has been convicted of one (1) or more prior offenses as described in  
 25          KRS 189A.010(5)(e) or has had his or her motor vehicle operator's license  
 26          suspended on one (1) or more occasions for refusing to take an alcohol  
 27          concentration or substance test, in the ten (10) year period immediately preceding

1 his or her arrest;  
 2 then the court shall continue to suspend the person's operator's license or privilege to  
 3 operate a motor vehicle, but in no event for a period longer than the license suspension  
 4 period applicable to the person under KRS 189A.070 and 189A.107. The provisions of  
 5 this section shall not be construed as limiting the person's ability to challenge any prior  
 6 convictions or license suspensions or refusals.

7 ➔Section 7. KRS 189A.410 is amended to read as follows:

- 8 (1) At any time during the suspension periods enumerated in:  
 9 (a) KRS 189A.070 for violation of KRS 189A.010(1)(c),~~(c)~~ (d), *or* (g); or  
 10 (b) KRS 189A.090 relating to a violation of KRS 189A.010(1) (c),~~(c)~~ (d), *or*  
 11 (g);

12 the court may grant the person hardship driving privileges for the balance of the  
 13 suspension period imposed by the Transportation Cabinet, if the court finds  
 14 reasonable cause to believe that revocation would hinder the person's ability to  
 15 continue his or her employment; continue attending school or an educational  
 16 institution; obtain necessary medical care; attend driver improvement, alcohol, or  
 17 substance abuse education programs; or attend court-ordered counseling or other  
 18 programs.

- 19 (2) Before granting hardship driving privileges, the court shall order the person to:  
 20 (a) Provide the court with proof of motor vehicle insurance;  
 21 (b) If necessary, provide the court with a written, sworn statement from his or her  
 22 employer, on a form provided by the cabinet, detailing his or her job, hours of  
 23 employment, and the necessity for the person to use the employer's motor  
 24 vehicle either in his or her work at the direction of the employer during  
 25 working hours, or in travel to and from work if the license is sought for  
 26 employment purposes; and  
 27 (c) If the person is self-employed, to provide the information required in

- 1 paragraph (b) of this subsection together with a sworn statement as to its truth;
- 2 (d) Provide the court with a written, sworn statement from the school or  
3 educational institution which he or she attends, of his or her class schedule,  
4 courses being undertaken, and the necessity for the person to use a motor  
5 vehicle in his or her travel to and from school or other educational institution  
6 if the license is sought for educational purposes. Licenses for educational  
7 purposes shall not include participation in sports, social, extracurricular,  
8 fraternal, or other noneducational activities;
- 9 (e) Provide the court with a written, sworn statement from a physician, or other  
10 medical professional licensed but not certified under the laws of Kentucky,  
11 attesting to the person's normal hours of treatment, and the necessity to use a  
12 motor vehicle to travel to and from the treatment if the license is sought for  
13 medical purposes;
- 14 (f) Provide the court with a written, sworn statement from the director of any  
15 alcohol or substance abuse education or treatment program as to the hours in  
16 which the person is expected to participate in the program, the nature of the  
17 program, and the necessity for the person to use a motor vehicle to travel to  
18 and from the program if the license is sought for alcohol or substance abuse  
19 education or treatment purposes;
- 20 (g) Provide the court with a copy of any court order relating to treatment,  
21 participation in driver improvement programs, or other terms and conditions  
22 ordered by the court relating to the person which require him or her to use a  
23 motor vehicle in traveling to and from the court-ordered program. The judge  
24 shall include in the order the necessity for the use of the motor vehicle; and
- 25 (h) Provide to the court any information as may be required by administrative  
26 regulation of the Transportation Cabinet.
- 27 (3) The court shall not issue a hardship license to a person who has refused to take an

1 alcohol concentration or substance test or tests offered by a law enforcement  
2 officer.