

CHAPTER 171**(HB 652)**

AN ACT relating to crimes and punishments.

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

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

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

- (1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath;
- (2) *"Ignition interlock device" means a device that connects a motor vehicle ignition system or motorcycle ignition system to a breath alcohol analyzer and prevents a motor vehicle ignition or motorcycle ignition from starting, and from continuing to operate, if a driver's breath alcohol concentration exceeds 0.02, as measured by the device;*
- (3) *"License" means any driver's or operator's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this state including:*
 - (a) *Any temporary license or instruction permit;*
 - (b) *The privilege of any person to obtain a valid license or instruction permit, or to drive a motor vehicle whether or not the person holds a valid license; and*
 - (c) *Any nonresident's operating privilege as defined in KRS Chapter 186 or 189;*
- (4) *"Limited access highway" has the same meaning as "limited access facility" does in KRS 177.220;*
- (5) "Refusal" means declining to submit to any test or tests pursuant to KRS 189A.103. Declining may be either by word or by the act of refusal. If the breath testing instrument for any reason shows an insufficient breath sample and the alcohol concentration cannot be measured by the breath testing instrument, the law enforcement officer shall then request the defendant to take a blood or urine test in lieu of the breath test. If the defendant then declines either by word or by the act of refusal, he shall then be deemed to have refused if the refusal occurs at the site at which any alcohol concentration or substance test is to be administered;
- ~~(6)(3)~~ When age is a factor, it shall mean age at the time of the commission of the offense;
and
- ~~(7)(4)~~ Unless otherwise provided, license suspensions under this chapter shall be imposed by the court. The court shall impose the applicable period of license suspension enumerated by this chapter and shall include in its order or judgment the length and terms of any suspension imposed. The license suspension shall be deemed effective on the date of entry of the court's order or judgment. The role of the Transportation Cabinet shall be limited to administering the suspension period under the terms and for the duration enumerated by the court in its order or judgment;
- ~~(5) "Limited access highway" has the same meaning as "limited access facility" does in KRS 177.220;~~
- ~~(6) "License" means any driver's or operator's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this state including:~~

- ~~(a) Any temporary license or instruction permit;~~
- ~~(b) The privilege of any person to obtain a valid license or instruction permit, or to drive a motor vehicle whether or not the person holds a valid license; and~~
- ~~(c) Any nonresident's operating privilege as defined in KRS Chapter 186 or 189].~~

Section 2. KRS 189A.070 is amended to read as follows:

- (1) Unless the person is under eighteen (18) years of age, in addition to the penalties specified in KRS 189A.010, a person convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall have his license to operate a motor vehicle or motorcycle revoked by the court as follows:
 - (a) For the first offense within a five (5) year period, for a period of not less than thirty (30) days nor more than one hundred twenty (120) days;
 - (b) For the second offense within a five (5) year period, for a period of not less than twelve (12) months nor more than eighteen (18) months;
 - (c) For a third offense within a five (5) year period, for a period of not less than twenty-four (24) months nor more than thirty-six (36) months; and
 - (d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months.
 - (e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010(5)(e).
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (3) In addition to the period of license revocation set forth in subsection (1) *or* (7) of this section, no person shall be eligible for reinstatement of his privilege to operate a motor vehicle until he has completed the alcohol or substance abuse education or treatment program ordered pursuant to KRS 189A.040.
- (4) A person under the age of eighteen (18) who is convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall have his license revoked by the court until he reaches the age of eighteen (18) or shall have his license revoked as provided in subsection (1) *or* (7) of this section, whichever penalty will result in the longer period of revocation *or court-ordered driving conditions*.
- (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court upon conviction. The court shall transmit the conviction records, and other appropriate information to the Transportation Cabinet. A court shall not waive or stay this procedure.
- (6) Should a person convicted under this chapter whose license is revoked fail to surrender it to the court upon conviction, the court shall issue an order directing the sheriff or any other peace officer to seize the license forthwith and deliver it to the court.
- (7) *A person whose license has been revoked pursuant to subsection (1)(b), (c), or (d) of this section may move the court to reduce the applicable minimum period of revocation by one-half (1/2), but in no case less than twelve (12) months. The court may, upon a written finding in the record for good cause shown, order such a period to be reduced by one-half (1/2), but in no case less than twelve (12) months, if the following conditions are satisfied:*

- (a) *The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in subsection (2) of Section 4 of this Act;*
 - (b) *The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and*
 - (c) *The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the applicable minimum period of revocation provided for under subsection (1)(b), (c), or (d) of this section nor for more than the respective maximum period of revocation provided for under subsection (1)(b), (c), or (d) of this section.*
- (8) *Upon a finding of a violation of any of the conditions specified in subsection (7) of this section or of the order permitting any reduction in a minimum period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the minimum period of revocation required under subsection (1)(b), (c), or (d) of this section.*

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

- (1) No person shall operate or be in physical control of a motor vehicle while his license is revoked or suspended under KRS 189A.010(6), 189A.070, 189A.107, 189A.200, or 189A.220, or operate or be in physical control of a motor vehicle without a functioning ignition interlock device in violation of KRS 189A.345(1).
- (2) In addition to any other penalty imposed by the court, any person who violates subsection (1) of this section shall:
 - (a) For a first offense within a five (5) year period, be guilty of a Class B misdemeanor and have his license revoked by the court for six (6) months, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d), in which event he shall be guilty of a Class A misdemeanor and have his license revoked by the court for a period of one (1) year;
 - (b) For a second offense within a five (5) year period, be guilty of a Class A misdemeanor and have his license revoked by the court for one (1) year, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d), in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of two (2) years;
 - (c) For a third or subsequent offense within a five (5) year period, be guilty of a Class D felony and have his license revoked by the court for two (2) years, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d), in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of five (5) years.
- (3) The five (5) year period under this section shall be measured in the same manner as in KRS 189A.070.
- (4) *After one (1) year of the period of revocation provided for in subsection (2)(b) or (c) of this section has elapsed, a person whose license has been revoked pursuant to either of those subsections may move the court to have an ignition interlock device installed for the remaining portion of the period of revocation. The court may, upon a written finding in*

the record for good cause shown, order an ignition interlock device installed if the following conditions are satisfied:

- (a) *The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in subsection (2) of Section 4 of this Act;*
 - (b) *The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and*
 - (c) *The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the period of revocation required for the person under subsection (2)(b) or (c) of this section.*
- (5) *Upon a finding of a violation of any of the conditions specified in subsection (4) of this section or of the order permitting the installation of an ignition interlock device in lieu of the remaining period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the remaining period of revocation required under subsection (2)(b) or (c) of this section.*

Section 4. KRS 189A.340 is amended to read as follows:

- (1) ~~For the purposes of this section and KRS 189A.345 and 189A.410, "ignition interlock device" means a device that connects a motor vehicle ignition system or motorcycle ignition system to a breath alcohol analyzer and prevents a motor vehicle ignition or motorcycle ignition from starting if a driver's breath alcohol concentration, as defined in KRS 189A.005, exceeds 0.02, as measured by the device.~~
- (2) In lieu of ordering license plate impoundment under KRS 189A.085 of a person convicted of a second or subsequent violation of KRS 189A.010, the court may order installation of an ignition interlock device as provided in this section as follows:
- (a) Except as provided in paragraph (d) of this subsection, at the time that the court revokes a person's license under any provision of KRS 189A.070 other than KRS 189A.070(1)(a), the court shall also order that, at the conclusion of the license revocation, the person shall be prohibited from operating any motor vehicle or motorcycle without a functioning ignition interlock device.
 - (b)
 1. The first time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of six (6) months.
 2. The second time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of twelve (12) months.
 3. The third or subsequent time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of thirty (30) months.
 4. The person whose license has been suspended for a second or subsequent violation of KRS 189A.010 shall not be able to apply to the court for permission to install an ignition interlock device until the person has completed one (1) year of license suspension without any subsequent conviction for a violation of KRS 189A.010 or 189A.090. If the court grants permission to install an ignition

interlock device, an ignition interlock device shall be installed on all vehicles owned or leased by the person whose license has been suspended.

- (c) In determining the five (5) year period under paragraph (b) of this subsection, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered, resulting in the license revocations described in KRS 189A.070.
 - (d) If the court finds that a person is required to operate a motor vehicle or motorcycle in the course and scope of the person's employment and the motor vehicle or motorcycle is owned by the employer, then the court shall order that the person may operate that motor vehicle or motorcycle during regular working hours for the purposes of his or her employment without installation of a functioning ignition interlock device on that motor vehicle or motorcycle if the employer has been notified of the prohibition established under paragraphs (a), (b), and (c) of this subsection.
- (2){(3)} Upon ordering the installation of a functioning ignition interlock device, the court, without a waiver or a stay of the following procedure, shall:
- (a) Transmit its order and other appropriate information to the Transportation Cabinet;
 - (b) Direct that the Transportation Cabinet records reflect:
 - 1. That the person shall not operate a motor vehicle or motorcycle without a functioning ignition interlock device, except as provided in paragraph (d) of subsection (1){(2)} of this section; and
 - 2. Whether the court has expressly permitted the person to operate a motor vehicle or motorcycle without a functioning ignition interlock device, as provided in paragraph (d) of subsection (1){(2)} of this section;
 - (c) Direct the Transportation Cabinet to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person shall operate only a motor vehicle or motorcycle equipped with a functioning ignition interlock device. However, if the exception provided for in paragraph (d) of subsection (1){(2)} of this section applies, the notation shall indicate the exception;
 - (d) Require proof of the installation of the functioning ignition interlock device and periodic reporting by the person for the verification of the proper functioning of the device;
 - (e) Require the person to have the device serviced and monitored at least every *thirty* (30){~~ninety~~ (90)} days for proper functioning by an entity approved by the Transportation Cabinet; and
 - (f) Require the person to pay the reasonable cost of leasing or buying, installing, servicing, and monitoring the device. The court may establish a payment schedule for the person to follow in paying the cost.
- (3){(4)} The Transportation Cabinet shall:
- (a) Certify ignition interlock devices for use in this Commonwealth;
 - (b) Approve ignition interlock device installers who install functioning ignition interlock devices under the requirements of this section;

- (c) Approve servicing and monitoring entities identified in paragraph (e) of subsection (2)~~(3)~~ of this section **and require those entities to report on driving activity within seven (7) days of servicing and monitoring each ignition interlock device to the respective court, prosecuting attorney, and defendant;**
- (d) Publish and periodically update on the Transportation Cabinet web site a list of the certified ignition interlock devices, the approved ignition interlock installers, and the approved servicing and monitoring entities;
- (e) Develop a warning label that an ignition interlock device installer shall place on a functioning ignition interlock device before installing that device. The warning label shall warn of the penalties established in KRS 189A.345; and
- (f) Promulgate administrative regulations to carry out the provisions of this subsection.

Section 5. KRS 189A.345 is amended to read as follows:

- (1) No person shall operate a motor vehicle or motorcycle without a functioning ignition interlock device when prohibited to do so under **subsection (1) of Section 4 of this Act**~~KRS 189A.340(2)~~ or under KRS 189A.410(2).
- (2) (a) No person shall start a motor vehicle or motorcycle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle or motorcycle to a person subject to the prohibition established in **subsection (1) of Section 4 of this Act**~~KRS 189A.340(2)~~ or under KRS 189A.440(2)(b).
 - (b) Any person who violates paragraph (a) of this subsection shall:
 - 1. For a first offense, be guilty of a Class B misdemeanor; and
 - 2. For a second or subsequent offense, be guilty of a Class A misdemeanor.
- (3) (a) No person shall:
 - 1. Knowingly install a defective ignition interlock device on a motor vehicle or motorcycle; or
 - 2. Tamper with an installed ignition interlock device with the intent of rendering it defective.
 - (b) Any person who violates paragraph (a) of this subsection shall:
 - 1. For a first offense, be guilty of a Class B misdemeanor; and
 - 2. For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from installing ignition interlock devices or directing others in the installation of ignition interlock devices.
- (4) (a) No person shall direct another person to install a defective ignition interlock device on a motor vehicle or motorcycle when the person giving the direction knows that the ignition interlock device is defective.
 - (b) Any person who violates paragraph (a) of this subsection shall:
 - 1. For a first offense, be guilty of a Class B misdemeanor; and
 - 2. For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from directing others in the installation of ignition interlock devices or installing ignition interlock devices.

Section 6. KRS 189A.410 is amended to read as follows:

- (1) At any time following the expiration of the minimum license suspension periods enumerated in KRS 189A.010(6), 189A.070, and 189A.107, the court may grant the person hardship driving privileges for the balance of the suspension period imposed by the court, upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:
 - (a) Continue his employment;
 - (b) Continue attending school or an educational institution;
 - (c) Obtain necessary medical care;
 - (d) Attend driver improvement, alcohol, or substance abuse education programs; or
 - (e) Attend court-ordered counseling or other programs.
- (2) Whenever the court grants a person hardship driving privileges under subsection (1) of this section, the court through court order, may:
 - (a) Prohibit the person from operating any motor vehicle or motorcycle without a functioning ignition interlock device~~[- as defined in KRS 189A.340(1)];~~
 - (b) Require that the person comply with all of the requirements of KRS 189A.340, except for the requirements found in *subsection (1) of Section 4 of this Act*~~[KRS 189A.340(2)];~~ and
 - (c) Require the person to install an ignition interlock device on every vehicle owned or leased by the person who is permitted to operate a motor vehicle under this section.
- (3) The court shall not issue a hardship license to a person who has refused to take an alcohol concentration or substance test or tests offered by a law enforcement officer.

Approved April 2, 2002