

CHAPTER 83

(HB 154)

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

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

➔Section 1. KRS 189A.085 is amended to read as follows:

- (1) Unless a person has been issued an ignition interlock license under KRS 189A.340 or a hardship license under KRS 189A.410, a person who has been convicted of an offense under KRS 189A.010 ~~may~~**shall** have the license plate or plates on all of the motor vehicles or motorcycles owned by him or her, either solely or jointly, impounded by the court of competent jurisdiction in accordance with the following procedures:
 - (a) ***Following a court order of impoundment of a license plate or plates***~~[At the final sentencing hearing, or within forty five (45) days thereafter]~~, the person shall physically surrender any and all license plate or plates currently in force on any motor vehicle or motorcycle owned either individually or jointly by him or her to the court ***at the final sentencing hearing, or within forty-five (45) days after the hearing. If the person fails to surrender his or her license plate or plates at the final sentencing hearing or within forty-five (45) days thereafter, the court may issue an order directing the sheriff or any other peace officer to seize the license plate or plates and to deliver any seized license plate or plates to the court.*** The order of the court suspending the license plate or plates shall not exceed the time for the suspension of the operator's license as specified in KRS 189A.070.
 - (b) The clerk of the court shall retain any surrendered plate or plates and ***then*** transmit all surrendered plate or plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulations promulgated by the Transportation Cabinet.
- (2) Upon application, the court may grant hardship exceptions to family members or other individuals affected by the surrender of any license plate or plates of any motor vehicle or motorcycle owned by the offender. Hardship exceptions may be granted by the court to the offender's family members or other affected individuals only if the family members or other affected individuals prove to the court's satisfaction that their inability to utilize the surrendered motor vehicles or motorcycles would pose an undue hardship upon the family members or other affected individuals. Upon the court's granting of hardship exceptions, the clerk or the Transportation Cabinet as appropriate, shall return to the family members or other affected individuals the license plate or plates of the motor vehicles or motorcycles of the offender for their utilization. The offender shall not be permitted to operate a motor vehicle or motorcycle for which the license plate has been suspended or for which a hardship exception has been granted, unless the offender has been issued an ignition interlock license under KRS 189A.340 or a hardship license under KRS 189A.410.
- (3) If the license plate of a jointly owned vehicle is impounded, this vehicle may be transferred to a joint owner of the vehicle who was not the violator.
- (4) If the license plate of a motor vehicle is impounded, the vehicle may be transferred.

➔Section 2. KRS 189A.103 is amended to read as follows:

The following provisions shall apply to any person who operates or is in physical control of a motor vehicle or a vehicle that is not a motor vehicle in this Commonwealth:

- (1) He or she has given his or her consent to one (1) or more tests of his or her blood, breath, and urine, or combination thereof, for the purpose of determining alcohol concentration or presence of a substance which may impair one's driving ability, if an officer has reasonable grounds to believe that a violation of KRS 189A.010(1) or 189.520(1) has occurred;
- (2) Any person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn the consent provided in subsection (1) of this section, and the test may be given;
- (3) The breath, blood, and urine tests administered pursuant to this section shall be administered at the direction of a peace officer having reasonable grounds to believe the person has committed a violation of KRS 189A.010(1) or 189.520(1).

- (a) Tests of the person's breath, blood, or urine, to be valid pursuant to this section, shall have been performed according to the administrative regulations promulgated by the secretary of the Justice and Public Safety Cabinet, and shall have been performed, as to breath tests, only after a peace officer has had the person under personal observation at the location of the test for a minimum of twenty (20) minutes.
 - (b) All breath tests shall be administered by a peace officer holding a certificate as an operator of a breath analysis instrument, issued by the secretary of the Justice and Public Safety Cabinet or his or her designee;
- (4) A breath test shall consist of a test which is performed in accordance with the manufacturer's instructions *or instructions adopted by the Department of Criminal Justice Training and approved by the manufacturer* for the use of the instrument. The secretary of the Justice and Public Safety Cabinet shall keep available for public inspection *and provide, upon request and without charge,* copies of these manufacturer's instructions *or instructions adopted by the Department of Criminal Justice Training and approved by the manufacturer* for all models of breath testing devices in use by the Commonwealth of Kentucky;
 - (5) When the preliminary breath test, breath test, or other evidence gives the peace officer reasonable grounds to believe there is impairment by a substance which is not subject to testing by a breath test, then blood or urine tests, or both, may be required in addition to a breath test, or in lieu of a breath test;
 - (6) Only a physician, registered nurse, phlebotomist, medical technician, or medical technologist not otherwise prohibited by law can withdraw any blood of any person submitting to a test under this section; and
 - (7) After the person has submitted to all alcohol concentration tests and substance tests requested by the officer, the person tested shall be permitted to have a person listed in subsection (6) of this section of his or her own choosing administer a test or tests in addition to any tests administered at the direction of the peace officer. Tests conducted under this section shall be conducted within a reasonable length of time. Provided, however, the nonavailability of the person chosen to administer a test or tests in addition to those administered at the direction of the peace officer within a reasonable time shall not be grounds for rendering inadmissible as evidence the results of the test or tests administered at the direction of the peace officer.

➔Section 3. KRS 189A.104 is amended to read as follows:

- (1) The only alcohol or substance testing that is subject to refusal or enhancement of penalties provided for in this chapter is:
 - (a) Breath analysis testing by *an instrument*~~(a machine)~~ installed, tested, and maintained by the Commonwealth for that specific purpose at a police station or detention facility;
 - (b) Blood or urine testing at the request of the officer at a police station, detention facility, or medical facility; or
 - (c) Combination of tests required in paragraphs (a) or (b) of this subsection.

- (2) The results of any breath analysis by an instrument other than one specified in subsection (1) of this section shall be inadmissible in court.

➔Section 4. KRS 189A.105 is amended to read as follows:

- (1) A person's refusal to submit to tests under KRS 189A.103 shall result in suspension of his or her driving privilege as provided in this chapter.
- (2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:
 - 1. That, if the person refuses to submit to such tests:
 - a. The fact of this refusal may be used against him or her in court as evidence of violating KRS 189A.010 and will result in suspension of his or her driver's license by the court at the time of arraignment; and
 - b. Is subsequently convicted of violating KRS 189A.010(1):
 - i. For a second or third time within a ten (10) year period, he or she will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he or she submits to the tests; and
 - ii. His or her license will be suspended by the Transportation Cabinet;

2. That, if a test is taken:
 - a. The results of the test may be used against the person in court as evidence of violating KRS 189A.010(1); and
 - b. The person has the right to have a test or tests of his or her blood performed by a person of his or her choosing described in KRS 189A.103 within a reasonable time of his or her arrest at the expense of the person arrested; and
 3. That although his or her license will be suspended, he or she may be eligible immediately for an ignition interlock license allowing him or her to drive during the period of suspension and, if he or she is convicted, he or she will receive a credit toward any other ignition interlock requirement arising from this arrest.
- (b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident~~[, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged]~~. However, if the incident involves a motor vehicle accident in which there was a fatality, the investigating peace officer shall seek such a search warrant for blood~~[, breath, or urine]~~ testing unless the testing has already been done by consent. If testing done pursuant to a warrant reveals the presence of alcohol or any other substance that impaired the driving ability of a person who is charged and convicted of a violation of KRS 189A.010(1), the sentencing court shall require, in addition to any other sentencing provision, that the defendant make restitution to the state for the cost of the testing.
- (3) During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney and shall be informed of this right. Inability to communicate with an attorney during this period shall not be deemed to relieve the person of his *or her* obligation to submit to the tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.
 - (4) Immediately following the administration of the final test requested by the officer, the person shall again be informed of his or her right to have a test or tests of his or her blood performed by a person of his or her choosing described in KRS 189A.103 within a reasonable time of his or her arrest at the expense of the person arrested. He or she shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.

➔Section 5. KRS 189A.107 is amended to read as follows:

- (1) A person who refuses to submit to an alcohol concentration or substance test requested by an officer having reasonable grounds to believe that the person violated KRS 189A.010(1) shall have his or her driver's license suspended during the pendency of the action as provided in KRS 189A.200.
- (2)
 - (a) In the event a defendant is not convicted of a violation of KRS 189A.010(1) in a case in which it is alleged that he or she refused to take an alcohol concentration or substance test, upon motion of the attorney for the Commonwealth, the court shall conduct a hearing, without a jury, to determine by clear and convincing evidence if the person actually refused the testing. However, the hearing shall not be required if the court has made a previous determination of the issue at a hearing held under KRS 189A.200 and 189A.220.
 - (b) If the court finds that the person did refuse to submit to *a breath, blood, or urine test*~~[the testing]~~, the court shall suspend the person's driver's license for the period of time the license would have been suspended upon conviction as set forth in KRS 189A.070(1), except that the court may authorize the person to apply to the Transportation Cabinet for issuance of an ignition interlock license under KRS 189A.340 for the period of the suspension.
 - (c) When the court orders the suspension of a person's license pursuant to this subsection, the person shall surrender the license in the same manner prescribed by KRS 189A.200(4). In addition, notice of the suspension shall be immediately transmitted to the Transportation Cabinet.

➔Section 6. KRS 189A.110 is amended to read as follows:

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

➔Section 7. Whereas driving under the influence of alcohol or any substance which impairs one's ability to drive a motor vehicle presents a danger to public safety, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Returned to Secretary of State April 5, 2022, and became law without Governor's signature April 6, 2022.