

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 blood taken
16 within two (2) hours of cessation of operation or physical control of a motor
17 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 shall give rise to the following**
26 **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 Prosecutors 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,

- 18 eighteen (18) months;
- 19 ii. For a person who is issued an ignition interlock license under
- 20 KRS 189A.340 but does not meet the one hundred twenty
- 21 (120) consecutive day requirement within the first eighteen
- 22 (18) months of the issuance of the ignition interlock license,
- 23 until the person meets the one hundred twenty (120)
- 24 consecutive day requirement or thirty-six (36) months,
- 25 whichever is shorter; or
- 26 iii. For all others, thirty-six (36) months;
- 27 d. For a fourth or subsequent offense within a ten (10) year period:
- 28 i. For a person who is issued an ignition interlock license under
- 29 KRS 189A.340 and who meets the one hundred twenty (120)
- 30 consecutive day requirement within the first thirty (30)
- 31 months of the issuance of the ignition interlock license, thirty
- 32 (30) months;
- 33 ii. For a person who is issued an ignition interlock license under
- 34 KRS 189A.340 but does not meet the one hundred twenty
- 35 (120) consecutive day requirement within the first thirty (30)
- 36 months of the issuance of the ignition interlock license, until
- 37 the person meets the one hundred twenty (120) consecutive
- 38 day requirement or sixty (60) months, whichever is shorter;
- 39 or
- 40 iii. For all others, sixty (60) months;
- 41 e. If the conviction records transmitted to the Transportation Cabinet
- 42 pursuant to subsection (3) of this section show that a person was
- 43 convicted of a:
- 44 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)~~ (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)~~ (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)~~ (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)~~ (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),~~(d)~~, or (g); or
10 (b) KRS 189A.090 relating to a violation of KRS 189A.010(1) (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.

3 ➔Section 8. KRS 189A.340 is amended to read as follows:

4 (1) (a) If a person's license is suspended pursuant to this chapter and the initial
5 suspension was for a violation of KRS 189A.010(1)(a), (b), (e), or (f), the sole
6 license the person shall be eligible for is an ignition interlock license pursuant
7 to this section.

8 (b) If a person's license is suspended pursuant to this chapter and the initial
9 suspension was for a violation of KRS 189A.010(1)(c),~~(d)~~ (d), or (g), the
10 person shall be eligible for an ignition interlock license pursuant to this
11 section and may be eligible for a hardship license pursuant to KRS 189A.410.

12 (2) (a) A person may apply for an ignition interlock license anytime, including after
13 receiving the notices under KRS 189A.105 or after his or her license has been
14 suspended pursuant to this chapter.

15 (b) If at the time the person applies for an ignition interlock license, the person's
16 license has been suspended pursuant to this chapter, the person shall be
17 authorized to drive to:

18 1. An ignition interlock device provider to have a functioning ignition
19 interlock device installed in his or her motor vehicle or motorcycle; and

20 2. The Transportation Cabinet to obtain an ignition interlock license;

21 This paragraph shall only apply within fourteen (14) days of the date printed
22 on the ignition interlock approval letter issued by the Transportation Cabinet
23 and if the person has the ignition interlock approval letter in the motor vehicle
24 or motorcycle.

25 (3) Before the Transportation Cabinet shall issue an ignition interlock license, the
26 person shall:

27 (a) Submit an application for an ignition interlock license;

- 1 (b) Provide proof of motor vehicle insurance;
- 2 (c) Provide an ignition interlock certificate of installation issued by an ignition
- 3 interlock device provider; and
- 4 (d) Provide any other information required by administrative regulations
- 5 promulgated by the Transportation Cabinet under KRS 189A.350.

6 (4) An ignition interlock license shall restrict the person to operating only a motor

7 vehicle or motorcycle equipped with a functioning ignition interlock device, unless

8 the person qualifies for an employer exemption under subsection (6) of this section.

9 This restriction shall remain in place for:

10 (a) If a person's license was suspended pretrial pursuant to KRS 189A.200, the

11 required suspension period under KRS 189A.200(6);

12 (b) If a person's license was suspended pursuant to KRS 189A.070 or 189A.107:

13 1. The required suspension period under KRS 189A.070(1); and

14 2. a. If the maximum suspension period under KRS 189A.070(1)(a) has

15 not yet been met, until the Transportation Cabinet has received a

16 declaration from the person's ignition interlock device provider, in

17 a form provided or approved by the cabinet, certifying that none of

18 the violations outlined in subdivision b. of this subparagraph has

19 occurred:

20 i. For a first offense within a ten (10) year period of KRS

21 189A.010(1)(a), (b), (c), (d),~~(e)~~ (g) or for any

22 offense of KRS 189A.010(1)(f), in the ninety (90)

23 consecutive days; and

24 ii. For all subsequent offenses within a ten (10) year period of

25 KRS 189A.010(1)(a), (b), (c), (d),~~(e)~~ (g), one

26 hundred twenty (120) consecutive days;

27 prior to the date of releasing the ignition interlock device

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restriction.

- b. If any of the following occur, it shall be a violation of the ninety (90) or one hundred twenty (120) consecutive day requirement:
 - i. Failure to take any random breath alcohol concentration test unless a review of the digital image confirms that the motor vehicle or motorcycle was not occupied by a driver at the time of the missed test;
 - ii. Failure to pass any random retest with a breath alcohol concentration of 0.02 or lower unless a subsequent test performed within ten (10) minutes registers a breath alcohol concentration lower than 0.02, and the digital image confirms the same person provided both samples;
 - iii. Failure of the person, or his or her designee, to appear at the ignition interlock device provider when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device;
 - iv. Failure of the person to pay fees established pursuant to subsection (7) of this section;
 - v. Tampering with an installed ignition interlock device with the intent of rendering it defective; or
 - vi. Altering, concealing, hiding, or attempting to alter, conceal, or hide, the person's identity from the ignition interlock device's camera while providing a breath sample;
- (c) If a person's license was suspended pursuant to KRS 189A.090, for the required suspension period under KRS 189A.090(2); or
- (d) If a person's license suspension was extended pursuant to KRS 189A.345, the required suspension period under KRS 189A.345(1).

- 1 (5) (a) The time period a person:
- 2 1. Holds a valid ignition interlock license pursuant to this section; or
- 3 2. Receives alcohol or substance abuse treatment in an inpatient residential
- 4 facility;
- 5 shall apply on a day-for-day basis toward satisfying the suspension periods
- 6 detailed in subsection (4) of this section.
- 7 (b) Except as provided in paragraph (c) of this subsection, the Transportation
- 8 Cabinet shall give the person a day-for-day credit for any time period the
- 9 person:
- 10 1. Held a valid ignition interlock license; or
- 11 2. Received alcohol or substance abuse treatment in an inpatient residential
- 12 facility.
- 13 (c) A person shall not receive day-for-day credit for days the person utilized the
- 14 employer exemption in accordance with subsection (6) of this section and
- 15 drove an employer's motor vehicle or motorcycle not equipped with a
- 16 functioning ignition interlock device.
- 17 (6) (a) A person with an ignition interlock license may operate a motor vehicle or
- 18 motorcycle not equipped with a functioning ignition interlock device if:
- 19 1. The person is required to operate an employer's motor vehicle or
- 20 motorcycle in the course and scope of employment; and
- 21 2. The business entity that owns the motor vehicle or motorcycle is not
- 22 owned or controlled by the person.
- 23 (b) To qualify for the employer exemption, the person shall provide the
- 24 Transportation Cabinet with a sworn statement from his or her employer
- 25 stating that the person and business entity meet the requirements of paragraph
- 26 (a) of this subsection.
- 27 (7) (a) Except as provided in paragraph (c) of this subsection, an ignition interlock

1 device provider may charge the following fees:

- 2 1. An installation fee for an alternative fuel vehicle or a vehicle with a
3 push button starter not to exceed one hundred thirty dollars (\$130), an
4 installation fee for all other vehicles not to exceed one hundred dollars
5 (\$100);
- 6 2. A monthly fee not to exceed one hundred dollars (\$100);
- 7 3. A removal fee not to exceed thirty dollars (\$30);
- 8 4. A reset fee not to exceed fifty dollars (\$50); or
- 9 5. A missed appointment fee not to exceed thirty-five dollars (\$35).

10 (b) A person who is issued an ignition interlock license shall pay fees as
11 established in his or her lease agreement with the ignition interlock device
12 provider for any ignition interlock device installed in his or her motor vehicle
13 or motorcycle. However, the fees shall never be more than allowed under
14 paragraph (a) of this subsection and are subject to paragraph (c) of this
15 subsection.

16 (c) Any person who has an income:

- 17 1. At or below two hundred percent (200%) but above one hundred fifty
18 percent (150%) of the federal poverty guidelines, shall pay only
19 seventy-five percent (75%) of fees established pursuant to paragraph (a)
20 of this subsection;
- 21 2. At or below one hundred fifty percent (150%) but above one hundred
22 percent (100%) of the federal poverty guidelines, shall pay only fifty
23 percent (50%) of fees established pursuant to paragraph (a) of this
24 subsection; or
- 25 3. At or below one hundred percent (100%) of the federal poverty
26 guidelines, shall pay only twenty-five percent (25%) of fees established
27 pursuant to paragraph (a) of this subsection;

1 As used in this paragraph, "federal poverty guidelines" has the same meaning
2 as in KRS 205.5621. The Transportation Cabinet shall determine the person's
3 income and where that income places the person on the federal poverty
4 guidelines.

5 (d) Neither the Commonwealth, the Transportation Cabinet, nor any unit of state
6 or local government shall be responsible for payment of any costs associated
7 with an ignition interlock device.

8 (8) For a person issued an ignition interlock license under this section who is residing
9 outside of Kentucky, the Transportation Cabinet may accept an ignition interlock
10 certificate of installation from an ignition interlock device provider authorized to do
11 business in the state where the person resides if the ignition interlock device meets
12 the requirements of that state.