

1           AN ACT relating to driving under the influence.

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

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

4    (1) A person shall not operate or be in physical control of a motor vehicle anywhere in  
5        this state:

6        (a) Having an alcohol concentration of 0.08 or more as measured by a  
7            scientifically reliable test or tests of a sample of the person's breath or blood  
8            taken within two (2) hours of cessation of operation or physical control of a  
9            motor vehicle;

10      (b) While under the influence of alcohol;

11      (c) While under the influence of any other substance or combination of  
12        substances which impairs one's driving ability;

13      (d) While the presence of a controlled substance listed in subsection (12) of this  
14        section is detected in the blood, as measured by a scientifically reliable test, or  
15        tests, taken within two (2) hours of cessation of operation or physical control  
16        of a motor vehicle;

17      (e) While under the combined influence of alcohol and any other substance which  
18        impairs one's driving ability; or

19      (f) Having an alcohol concentration of 0.02 or more as measured by a  
20            scientifically reliable test or tests of a sample of the person's breath or blood  
21            taken within two (2) hours of cessation of operation or physical control of a  
22            motor vehicle, if the person is under the age of twenty-one (21).

23    (2) With the exception of the results of the tests administered pursuant to KRS  
24        189A.103(7):

25        (a) If the sample of the person's blood or breath that is used to determine the  
26            alcohol concentration thereof was obtained more than two (2) hours after  
27            cessation of operation or physical control of a motor vehicle, the results of the

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

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

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

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

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

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

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

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

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

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

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

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

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

- (c) For a third offense within a ten (10) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than thirty (30) days nor more than twelve (12) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release;
- (d) For a fourth or subsequent offense within a ten (10) year period, be guilty of a Class D felony. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release; and
- (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state or jurisdiction, for operating or being in control

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

7 (6) **(a)** Any person who violates the provisions of subsection (1)(f) of this section  
8 shall:

13        2. For the second offense, be fined no less than three hundred fifty  
14        dollars (\$350) and no more than five hundred dollars (\$500) and shall  
15        be sentenced to twenty (20) hours of community service; and

16        3. For the third or subsequent offense, be fined no less than five hundred  
17        dollars (\$500) and no more than one thousand dollars (\$1,000) and  
18        shall be sentenced to forty (40) hours of community service.

19       (b) A person subject to the penalties of this subsection shall not be subject to the  
20        penalties established in subsection (5) of this section or any other penalty  
21        established pursuant to KRS Chapter 189A, except those established in KRS  
22        189A.040(1) and KRS 189A.070.

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

27 (8) (a) For a second or third offense *under subsection (5) of this section* within a ten

(10) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release.

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;

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

27 (1) (a) 1. Unless the person is under eighteen (18) years of age, in addition to the

1                   penalties specified in KRS 189A.010, the Transportation Cabinet shall  
2                   suspend a person's license to operate a motor vehicle or motorcycle  
3                   upon conviction of KRS 189A.010(1).

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

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

(12) months of the issuance of the ignition interlock license, until the person meets the one hundred twenty (120) consecutive day requirement or eighteen (18) months, whichever is shorter; or

iii. For all others, eighteen (18) months;

c. For a third offense within a ten (10) year period:

- i. For a person who is issued an ignition interlock license under KRS 189A.340 and who meets the one hundred twenty (120) consecutive day requirement within the first eighteen (18) months of the issuance of the ignition interlock license, eighteen (18) months;

- ii. For a person who is issued an ignition interlock license under KRS 189A.340 but does not meet the one hundred twenty (120) consecutive day requirement within the first eighteen (18) months of the issuance of the ignition interlock license, until the person meets the one hundred twenty (120) consecutive day requirement or thirty-six (36) months, whichever is shorter; or

iii. For all others, thirty-six (36) months;

d. For a fourth or subsequent offense within a ten (10) year period:

- i. For a person who is issued an ignition interlock license under KRS 189A.340 and who meets the one hundred twenty (120) consecutive day requirement within the first thirty (30) months of the issuance of the ignition interlock license, thirty (30) months;

ii. For a person who is issued an ignition interlock license under KRS 189A.340 but does not meet the one hundred twenty

(120) consecutive day requirement within the first thirty (30) months of the issuance of the ignition interlock license, until the person meets the one hundred twenty (120) consecutive day requirement or sixty (60) months, whichever is shorter; or

iii. For all others, sixty (60) months;

e. If the conviction records transmitted to the Transportation Cabinet pursuant to subsection (3) of this section show that a person was convicted of a:

- i. First offense of KRS 189A.010, the person's license shall be suspended as provided in subdivision a. of this subparagraph;

- ii. Second offense of KRS 189A.010, the person's license shall be suspended as provided in subdivision b. of this subparagraph:

iii. Third offense of KRS 189A.010, the person's license shall be suspended as provided in subdivision c. of this subparagraph;

and

- iv. Fourth or subsequent offense of KRS 189A.010, the person's license shall be suspended as provided in subdivision d. of this subparagraph; and

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

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

a. *For the first offense:*

1                   *i.* For a person who is issued an ignition interlock license under  
2                   KRS 189A.340 and who meets the ninety (90) consecutive  
3                   day requirement within the first four (4) months of the  
4                   issuance of the ignition interlock license, four (4) months;

5                   *ii. [b.]* For a person who is issued an ignition interlock license under  
6                   KRS 189A.340 but does not meet the ninety (90)  
7                   consecutive day requirement within the first four (4) months  
8                   of the issuance of the ignition interlock license, until the  
9                   person meets the ninety (90) consecutive day requirement or  
10                  six (6) months, whichever is shorter; or

11                  *ii. [c.]* For all others, six (6) months;

12                  ***b. For the second offense:***

13                  *i. For a person who is issued an ignition interlock license*  
14                  *under KRS 189A.340 and who meets the one hundred*  
15                  *twenty (120) consecutive day requirement within the first*  
16                  *twelve (12) months of the issuance of the ignition interlock*  
17                  *license, twelve (12) months;*

18                  *ii. For a person who is issued an ignition interlock license*  
19                  *under KRS 189A.340 but does not meet the one hundred*  
20                  *twenty (120) consecutive day requirement within the first*  
21                  *twelve (12) months of the issuance of the ignition interlock*  
22                  *license, until the person meets the one hundred twenty*  
23                  *(120) consecutive day requirement or eighteen (18) months,*  
24                  *whichever is shorter; or*

25                  *iii. For all others, eighteen (18) months;*

26                  ***c. For a third offense or subsequent offense:***

27                  *i. For a person who is issued an ignition interlock license*

under KRS 189A.340 and who meets the one hundred twenty (120) consecutive day requirement within the first eighteen (18) months of the issuance of the ignition interlock license, eighteen (18) months;

- ii. For a person who is issued an ignition interlock license under KRS 189A.340 but does not meet the one hundred twenty (120) consecutive day requirement within the first eighteen (18) months of the issuance of the ignition interlock license, until the person meets the one hundred twenty (120) consecutive day requirement or thirty-six (36) months, whichever is shorter; or
- iii. For all others, thirty-six (36) months

4. For purposes of this paragraph, "ninety (90) consecutive day requirement" and "one hundred twenty (120) consecutive day requirement" mean the requirements established in KRS 189A.340(4)(b)2.

(b) For a person under the age of eighteen (18), in addition to the penalties specified in KRS 189A.010, the Transportation Cabinet shall suspend the person's license to operate a motor vehicle or motorcycle upon conviction of KRS 189A.010(1). The person shall have his or her license suspended until he or she reaches the age of eighteen (18) or as provided in paragraph (a) of this subsection, whichever penalty will result in the longer period of suspension.

23 (2) In addition to the period of license suspension set forth in subsection (1) of this  
24 section, no person shall be eligible for reinstatement of his or her full privilege to  
25 operate a motor vehicle or motorcycle until he or she has completed the alcohol or  
26 substance abuse education or treatment program ordered pursuant to KRS  
27 189A.040.

- 1       (3) Upon conviction of KRS 189A.010(1):
  - 2           (a) A person shall surrender his or her license to operate a motor vehicle or
  - 3           motorcycle to the court. Should the person fail to surrender his or her license
  - 4           to the court, the court shall issue an order directing the sheriff or any other
  - 5           peace officer to seize the license ~~forthwith~~ and deliver it to the court. The
  - 6           court shall then forward the license to the Transportation Cabinet. This
  - 7           paragraph shall not apply to a person who has previously surrendered his or
  - 8           her license pursuant to KRS 189A.200; and
  - 9           (b) The court shall immediately transmit the conviction records and other
  - 10           appropriate information to the Transportation Cabinet. A court shall not waive
  - 11           or stay this procedure.
- 12       (4) In determining the ten (10) year period under this section, the period shall be
- 13           measured from the dates on which the offenses occurred for which the judgments of
- 14           conviction were entered.

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

- 16       (1) (a) If a person's license is suspended pursuant to this chapter and the initial
- 17           suspension was for a violation of KRS 189A.010(1)(a), (b), (e), or (f), the sole
- 18           license the person shall be eligible for is an ignition interlock license pursuant
- 19           to this section.
- 20       (b) If a person's license is suspended pursuant to this chapter and the initial
- 21           suspension was for a violation of KRS 189A.010(1)(c) or (d), the person shall
- 22           be eligible for an ignition interlock license pursuant to this section and may be
- 23           eligible for a hardship license pursuant to KRS 189A.410.
- 24       (2) (a) A person may apply for an ignition interlock license anytime, including after
- 25           receiving the notices under KRS 189A.105 or after his or her license has been
- 26           suspended pursuant to this chapter.
- 27       (b) If at the time the person applies for an ignition interlock license, the person's

1                   license has been suspended pursuant to this chapter, the person shall be  
2                   authorized to drive to:

3                   1. An ignition interlock device provider to have a functioning ignition  
4                   interlock device installed in his or her motor vehicle or motorcycle; and  
5                   2. The Transportation Cabinet to obtain an ignition interlock license;

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

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

12                 (a) Submit an application for an ignition interlock license;  
13                 (b) Provide proof of motor vehicle insurance;  
14                 (c) Provide an ignition interlock certificate of installation issued by an ignition  
15                 interlock device provider; and  
16                 (d) Provide any other information required by administrative regulations  
17                 promulgated by the Transportation Cabinet under KRS 189A.350.

18                 (4) An ignition interlock license shall restrict the person to operating only a motor  
19                 vehicle or motorcycle equipped with a functioning ignition interlock device, unless  
20                 the person qualifies for an employer exemption under subsection (6) of this section.

21                 This restriction shall remain in place for:

22                 (a) If a person's license was suspended pretrial pursuant to KRS 189A.200, the  
23                 required suspension period under KRS 189A.200(6);  
24                 (b) If a person's license was suspended pursuant to KRS 189A.070 or 189A.107:  
25                   1. The required suspension period under KRS 189A.070(1); and  
26                   2. a. If the maximum suspension period under KRS 189A.070(1)(a) has  
27                   not yet been met, until the Transportation Cabinet has received a

1 declaration from the person's ignition interlock device provider, in  
2 a form provided or approved by the cabinet, certifying that none of  
3 the violations outlined in subdivision b. of this subparagraph has  
4 occurred:

5 i. For a first offense within a ten (10) year period of KRS  
6 189A.010(1)(a), (b), (c), (d), or (e) or for the first[any]  
7 offense of KRS 189A.010(1)(f), in the ninety (90)  
8 consecutive days; and

9 ii. For all subsequent offenses within a ten (10) year period of  
10 KRS 189A.010(1)(a), (b), (c), (d), or (e) or for all  
11 subsequent offenses of subsection (1)(f) of Section 1 of this  
12 Act, one hundred twenty (120) consecutive days;  
13 prior to the date of releasing the ignition interlock device  
14 restriction.

15 b. If any of the following occur, it shall be a violation of the ninety  
16 (90) or one hundred twenty (120) consecutive day requirement:

17 i. Failure to take any random breath alcohol concentration test  
18 unless a review of the digital image confirms that the motor  
19 vehicle or motorcycle was not occupied by a driver at the  
20 time of the missed test;

21 ii. Failure to pass any random retest with a breath alcohol  
22 concentration of 0.02 or lower unless a subsequent test  
23 performed within ten (10) minutes registers a breath alcohol  
24 concentration lower than 0.02, and the digital image  
25 confirms the same person provided both samples;

26 iii. Failure of the person, or his or her designee, to appear at the  
27 ignition interlock device provider when required for



1                   drove an employer's motor vehicle or motorcycle not equipped with a  
2                   functioning ignition interlock device.

3 (6) (a) A person with an ignition interlock license may operate a motor vehicle or  
4 motorcycle not equipped with a functioning ignition interlock device if:  
5 1. The person is required to operate an employer's motor vehicle or  
6 motorcycle in the course and scope of employment; and  
7 2. The business entity that owns the motor vehicle or motorcycle is not  
8 owned or controlled by the person.

9 (b) To qualify for the employer exemption, the person shall provide the  
10 Transportation Cabinet with a sworn statement from his or her employer  
11 stating that the person and business entity meet the requirements of paragraph  
12 (a) of this subsection.

13 (7) (a) Except as provided in paragraph (c) of this subsection, an ignition interlock  
14 device provider may charge the following fees:  
15 1. An installation fee for an alternative fuel vehicle or a vehicle with a  
16 push button starter not to exceed one hundred thirty dollars (\$130), an  
17 installation fee for all other vehicles not to exceed one hundred dollars  
18 (\$100);  
19 2. A monthly fee not to exceed one hundred dollars (\$100);  
20 3. A removal fee not to exceed thirty dollars (\$30);  
21 4. A reset fee not to exceed fifty dollars (\$50); or  
22 5. A missed appointment fee not to exceed thirty-five dollars (\$35).  
23 (b) A person who is issued an ignition interlock license shall pay fees as  
24 established in his or her lease agreement with the ignition interlock device  
25 provider for any ignition interlock device installed in his or her motor vehicle  
26 or motorcycle. However, the fees shall never be more than allowed under  
27 paragraph (a) of this subsection and are subject to paragraph (c) of this

1 subsection.

2 (c) Any person who has an income:

3 1. At or below two hundred percent (200%) but above one hundred fifty  
4 percent (150%) of the federal poverty guidelines, shall pay only  
5 seventy-five percent (75%) of fees established pursuant to paragraph (a)  
6 of this subsection;

7 2. At or below one hundred fifty percent (150%) but above one hundred  
8 percent (100%) of the federal poverty guidelines, shall pay only fifty  
9 percent (50%) of fees established pursuant to paragraph (a) of this  
10 subsection; or

11 3. At or below one hundred percent (100%) of the federal poverty  
12 guidelines, shall pay only twenty-five percent (25%) of fees established  
13 pursuant to paragraph (a) of this subsection;

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

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

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